

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA : Cr-04-966 (FB)

-against- : U. S. Courthouse

KENNETH MCGRIFF, : Brooklyn, New York

DEFENDANT, :

- - - - - X February 9, 2007  
10:00 o'clock a.m.

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE FREDERIC BLOCK  
UNITED STATES DISTRICT JUDGE and a jury.

APPEARANCES:

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BY: CAROLYN POKORNY  
JASON JONES  
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Proceedings recorded by mechanical stenography. Transcript  
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1           THE CLERK: Criminal cause on trial, United States  
2 versus Kevin McGri ff.

3           (Appearances noted).

4           THE COURT: Before we call the jurors in to hear  
5 the defense summation, let me just briefly tell you what I'm  
6 thinking about in terms of changing the charge. It's  
7 interesting because each of these cases, Aguilar, Wilson, have  
8 their own unique circumstances and factors to it.

9           What we have here that I don't think exists in  
10 Aguilar, perhaps not even in Wilson, were a number of these  
11 cooperators who initially qualified for the death penalty,  
12 then we have those circumstances.

13           When we deal with mitigating factors, it does seem  
14 to me that arguably there's an issue of law as to what legally  
15 constitutes a mitigating fact.

16           I think all those do as a matter of law constitute  
17 mitigating factors. How could it be otherwise?

18           If a proposed mitigating factor was whether somebody  
19 had long hair or short hair, I'll rule as a matter of law that  
20 was not a mitigating factor, but I think all the mitigating  
21 factors that have been proposed by the defense do qualify as a  
22 matter of law, matters that the jury can consider and weigh.

23           We have a breakdown which of those are factually  
24 established and those would require the jury to make the  
25 factual determination. Some of them are of a mixed breed.

1           For example, mitigating factor number one has a  
2 combination of factually established aspects to it and those  
3 which would require, perhaps, a jury to make a determination.

4           For example it says he will be severely punished if  
5 incarcerated for life without the prospects of parole. That  
6 aspect of proposed mitigating factor number one, which talks  
7 about his of lifetime confinement, is factually established.  
8 Whether he would be severely punished or not is something  
9 which I can't say as a matter of fact -- as a matter of  
10 law -- has been factually established. What constitutes  
11 severe punishment can be based upon the testimony of the  
12 expert, all those other facts the jury will consider.

13           If you want to be pristine about it, I'm willing to  
14 say numbers one through eight are factually established, but  
15 I'll eliminate the word severe on number one.

16           MR. RUHNKE: That's fine.

17           THE COURT: We're on the same page.

18           The charge will reflect that these are factually  
19 established, numbers one through eight, invite the jury to  
20 determine in respect to the rest of the mitigating factors  
21 that the defendant has established them by the requisite  
22 preponderance of the evidence.

23           To be honest with the jury, we have to change the  
24 verdict sheet to tell them the first eight have been  
25 established by mitigating factors; that they are to consider

1 whether the others have been established. I think that's the  
2 honest way of doing it. That's my sense.

3 I would be inclined to tell the jury the same thing  
4 about the aggravating factors, except I'm apprehensive about  
5 it. In effect we have said that because we have the  
6 stipulation, we're telling them straight out that conducting a  
7 criminal enterprise is a statutory aggravating factor.

8 While it is not going to say that in the verdict  
9 sheet, because of what I mentioned from time to time the  
10 concept this is an element of the crime and I'm hesitant to  
11 just tell a jury straight out an element has absolutely been  
12 established rather than to have them actually say that.

13 MR. RUHNKE: Certainly after Ring versus Arizona,  
14 statutory factors are elements of a capital crime.

15 THE COURT: I want to explain to the government  
16 there was a difference, you see, between knowing it on the one  
17 hand, where I would be inclined to say it's been established  
18 if not for the Circuit Court instructions to be careful about  
19 that.

20 MS. POKORNY: We're not objecting to it.

21 THE COURT: That's my thinking at the present time.  
22 I wanted to share that with you before we have the summation.

23 MS. POKORNY: I think that's right. As to the  
24 conspirators, this issue was created because we moved away  
25 from the statutory mitigator which says equally culpable

1 conspirator will not be punished by death, it's now been  
2 watered down to just a form of codefendant will be punished  
3 by --

4 THE COURT: The jury will understand what we talked  
5 about. I don't think there's any confusion. I may just  
6 reinforce that during my presentation of the charge, talk  
7 about these defendants, these coconspirators. They're one and  
8 the same, are they not?

9 MS. POKORNY: A mitigator would be an equally  
10 culpable coconspirator, so there would be a judgment call as  
11 to whether or not they're equally culpable. It's been watered  
12 down to just this person is not seeking -- not facing the  
13 death penalty.

14 THE COURT: It's a question of what constitutes a  
15 matter of law as compared to a factual matter for the jury to  
16 assess.

17 We are in an area of the law which does have a lot  
18 of room in it for appellate courts to give further definition  
19 and refinement to these things.

20 The whole business of the federal government being  
21 in the business of death is not that current, that we have a  
22 fully developed body of law to draw upon. So, we have to make  
23 our best judgments as we go along.

24 I do think the issue if something is or is not a  
25 mitigating factor sounds to me that's an issue of law. I am

1 determining all these cooperators, as a matter of law, the  
2 jury can consider those as mitigating factors. That seems to  
3 make conceptual sense to me.

4 MR. RUHNKE: Two quick points before we get to the  
5 summation. At this time I would like to have the case  
6 withdrawn from the jury, should have moved for this earlier,  
7 but on the evidence that's been heard, the jury could not find  
8 any of the aggravating factors; therefore, cannot consider  
9 death.

10 THE COURT: I'll deny that. You made your record.  
11 Anything else you need to do?

12 MR. RUHNKE: One more thing. Before the jury gets  
13 the case, I would ask your Honor to disregard Ms. Pokorny's  
14 questions to the witness yesterday afternoon about didn't the  
15 Supreme Team this, didn't the Supreme Team that.

16 THE COURT: I told them, I will tell them about it  
17 again, I've told them before, the question is not evidence.  
18 That's sufficient. I don't think I have to really point  
19 specifically to chapter and verse. We did make comments like  
20 that, I -- you did make comments, I think during the  
21 summation. I told the jury during the summation.

22 Anything else?

23 MS. POKORNY: The witness testified based on his  
24 reputation in the community, how wonderful --

25 THE COURT: You don't have to argue. I made my

1 ruling. I didn't stop you from asking questions about the  
2 reputation, but we processed that already, don't have to  
3 repeat that.

4 Anything else?

5 MR. RUHNKE: No.

6 THE COURT: We'll get going. You know enough what  
7 I'm going to do in respect to the charge during your  
8 summation. We'll go over the specific language before I give  
9 the charge to the jury.

10 THE CLERK: Shall I bring the jury in?

11 THE COURT: You can bring the jury in.

12 THE CLERK: Put the camera on?

13 THE COURT: Is that realistic? Are there people  
14 downstairs? We have plenty of room, if people are downstairs,  
15 they could come up.

16 THE CLERK: Some people are choosing to go to the  
17 cafeteria.

18 THE COURT: Are there people outside the courtroom?  
19 If so, why don't we invite them to come into the courtroom?

20 MS. POKORNY: I'm not saying that. Sometimes the  
21 amount of people in the courtroom changes during the  
22 arguments.

23 THE COURT: Leave it on. It seems silly to me.

24 Bring the jury in, please.

25 (Jury enters courtroom.)

1 THE COURT: Members of the jury, as we told you  
2 yesterday, we're here to now listen to the defense summation.  
3 The government will then have a brief rebuttal and then I'll  
4 explain the law to you and you'll begin your deliberations.  
5 We'll see how it goes timewise. It would be good if I get  
6 that all to you before lunch. We'll see.

7 We're ready.

8 MS. BARRETT: Thank you, your Honor.

9 Good morning, ladies and gentlemen. First, I wanted  
10 to thank you all for your attention on behalf of Mr. Ruhnke  
11 and myself, on behalf of Mr. McGriff and on behalf of his  
12 family and friends. We appreciate it. We know it's hard and  
13 we know you have done a wonderful job paying attention and  
14 carefully listening. Thank you.

15 I wanted to open to talk to you about hypocrisy.  
16 Hypocrisy is all over this effort to execute Mr. McGriff.

17 Imagine the hypocrisy of seeking the death penalty  
18 against Mr. McGriff and not Mr. Mungo, Mr. Mosley and the  
19 others. Imagine what Mr. Jones would have to say to you if  
20 you were sitting here in judgment of Barry Mungo with four  
21 dead people to his name, the men who put the bullets into Troy  
22 Singleton and into Eric Smith will go home some day, some of  
23 them. They do not face the death penalty. It's hypocritical  
24 to say that Mr. McGriff is worthy of the death penalty as the  
25 only possible punishment when those individuals do not face



1 the death penalty and some will go home.

2 Your decision is soon. The time for you to decide  
3 this case is coming. This is a unique and individual judgment  
4 for life and death, the same now as it was when I spoke to you  
5 two days ago. Your decision is the final one, is death the  
6 only right punishment for Kenneth McGriff?

7 You are the ultimate determiners whether Kenneth  
8 McGriff lives or dies.

9 I mentioned this in the beginning. What's this all  
10 about? Is this an attempt to excuse criminal conduct? No.  
11 No one is trying to excuse any criminal conduct, be it drug  
12 dealing or murder. No one is trying to excuse that. No one  
13 is trying to justify anything. There's no justification for  
14 taking the life of another human being. I would never, ever,  
15 suggest there was.

16 It's not an explanation. We haven't offered you an  
17 explanation why things have happened. That's not what we're  
18 here for. We're not here to blame others, but we are here,  
19 what we are here to do is answer the only real question. Is  
20 death the only answer for Kenneth McGriff?

21 The judge will tell you that this is an individual  
22 decision and I say "not sure," because life, that is what it  
23 boils down to, that's how the law boils down; that if you're  
24 not sure death is the only right punishment, then the  
25 appropriate sentence is life, and that's how you should vote.

1 If you're not sure, if there's a doubt, a doubt in your mind  
2 that death is the right punishment, the only right punishment,  
3 then you should vote for life.

4 One vote means life. That doesn't mean that you  
5 don't deliberate. I would never suggest you shouldn't sit  
6 down and discuss and listen to what others say, but it is a  
7 unique and individual decision. If, after listening to all  
8 your fellow jurors and discussing it as thoroughly as you  
9 think appropriate, you were even the only vote for a life  
10 sentence, the sentence would be life. That's why I say one  
11 vote equals life. All of you must vote for the execution of  
12 Kenneth McGriff in order for that to take place.

13 Any one of you is free to decide that death is not  
14 the appropriate punishment.

15 We presented to you a story of Mr. McGriff's life,  
16 including the circumstances of his childhood. We've also  
17 presented redeeming qualities, not as an excuse, again, or a  
18 justification of anything. We gave you redeeming qualities  
19 because there is good in him and that's a reason to let him  
20 live, because there is good in him, not because there's a  
21 justification for criminal conduct, not because, as it has  
22 been argued, we're trying to excuse criminal conduct. We are  
23 not. That's not why we presented that evidence. It is  
24 because there is good in him. He has redeeming qualities.

25 You saw the witnesses testify. You saw the

1 exhibits. I'll go into details about the witnesses a little  
2 bit later.

3 What mitigating factors are is reasons not to impose  
4 a sentence of death. You know that. We talked about it  
5 before.

6 The first mitigating factor that you will see on the  
7 verdict sheet is if not condemned to death, Mr. McGriff will  
8 be punished severely by life in prison without ever being  
9 released.

10 Now, I've added the word "severely." This word  
11 "severely" will not appear on verdict sheet. However, I think  
12 as I will go over with you, there is plenty of evidence that a  
13 punishment of life in prison is a very severe sentence. The  
14 law says so as well. The law says the punishment of life in  
15 prison without ever being released is a severe punishment, the  
16 most severe punishment short of execution.

17 I wanted to talk to you about future danger in  
18 prison a little bit, because Mr. Jones would have you believe  
19 that this is a rare case, the worst of the worst; that Kenneth  
20 McGriff is the worst of the worst.

21 You heard yesterday -- you heard yesterday about  
22 people who are the worst of the worst and where are they? Not  
23 on death row. The terrorists, people who torture people,  
24 people who murder children, murderers who kill in prison.  
25 Some of them are on ADX Florence. You heard some of their

1 names talked about. Mr. Kaczynski, the uni bomber in Florence,  
2 not on death row.

3 The worst of the worst is not Kenneth McGri ff. In  
4 fact, as I will talk about with you later, perhaps some of the  
5 worst of the worst sat in that witness stand (indicating) and  
6 testified to you.

7 1998, Kenneth McGri ff pled guilty to a continuing  
8 criminal enterprise, meaning he participated in a drug  
9 organization of more than five people. That's what the law  
10 defines as continuing criminal enterprise.

11 He was sentenced to 12 years. Much has been made of  
12 the 1980's and the Supreme Team in an effort to have you  
13 believe that there was something to be afraid of.

14 He was sentenced to 12 years as a result of that CCE  
15 conviction. That term of years tells you more about the  
16 severity of the offense than anything that the government has  
17 said.

18 There is no evidence that the Supreme Team existed  
19 after the 1980's. None. None in this case. Think about it.  
20 None. None. Yet, that's all we hear about.

21 The government wants to keep the myth alive in order  
22 to further their goal. Who do you think the people are in the  
23 courtroom? Now you know who they are. It's not the Supreme  
24 Team. It's friends and neighbors and family and loved ones of  
25 Kenneth McGri ff. They're people who care about him, love him.

1 It's not the Supreme Team. The Supreme Team was over long  
2 ago.

3 In addition, in November of 1988 when Kenneth  
4 McGri ff pled guilty, he went to federal prison for, all  
5 together, about ten years. Do you think for one minute that  
6 if there was a single incident of violence in federal prison  
7 by Kenneth McGri ff you wouldn't have heard about it from  
8 Mr. Jones? Think about that. You heard no evidence of any  
9 violence on the part of Kenneth McGri ff while he was in  
10 prison, none whatsoever. Not even a tussle with a guard over  
11 toothpaste. Nothing. And if there was, it would be here.

12 Nevertheless, Mr. Jones would have you believe that  
13 the federal Bureau of Prisons cannot take care of Mr. McGri ff.  
14 They already have. USP Allenwood in Pennsylvania, parameters,  
15 Special Housing Unit encircled there. If you look carefully,  
16 you could see the tops of the cages, the cage where you saw  
17 the rec cage.

18 USP Atlanta, a formidable facility, USP Beaumont, I  
19 don't think the smoke in the background has anything to do  
20 with the prison, but look at the razor wire, the gun towers.  
21 How could he be a danger in prison?

22 United States penitentiary, Coleman, Florida. You  
23 remember Erica Ford's video, she testified she was going down  
24 to Coleman, Florida as taking some kids down there to show  
25 them what a penitentiary was like, why it is not a pleasant

1 place and why they shouldn't want to go there. This is not  
2 boot camp. This is prison.

3 Pollock, Louisiana, U.S. penitentiary. U.S.  
4 Penitentiary Lee, in Virginia, look at those gun towers.  
5 People are in prison there.

6 This is ADX Florence, I should have recognized the  
7 bare hills in the background. Florence, Colorado. The Bureau  
8 of Prisons is not capable of taking care of somebody like  
9 Kenneth McGriff? I don't think so. Look at that razor wire.

10 I wanted to, before we go on to the next mitigating  
11 factor, I wanted to remind you very briefly of something about  
12 what prison is like, and the power of the Bureau of Prisons  
13 that can be brought to bear.

14 (Tape played.)

15 MS. BARRETT: Even if Mr. McGriff were a prisoner  
16 who presented problems like Mr. O'Driscoll there, which he is  
17 not, and you know that because there is no evidence of that.  
18 Even if he presented problems, the Bureau of Prisons is  
19 perfectly capable of taking care of those problems.

20 The other thing I want to point out to you about  
21 Mr. McGriff's time in federal prison is Mr. Jones made  
22 something of the idea that someone could order things to  
23 happen on the outside. You remember that, right? Did you  
24 hear anything about any of that while he was in federal  
25 prison? No, there were no orders. There was nothing, no

1 evidence of anything that he did while he was in federal  
2 prison that would warrant anyone to make that argument to you.

3 If fairness and justice are served by the sentences  
4 of imprisonment for the others responsible for the murders,  
5 then how can a lifetime in prison be the wrong punishment for  
6 Kevin McGri ff? That's what you really have to decide. Is  
7 death the only right punishment? How is it wrong to sentence  
8 him to a lifetime imprisonment? This is the second mitigating  
9 factor.

10 You remember this, that capital punishment  
11 chronology, Nicole Brown, Dennis Crosby, Kenneth McGri ff and  
12 Emanuel Mosley, death penalty was sought for about two weeks.  
13 Then the notices were withdrawn by everyone, as to everyone  
14 but Mr. McGri ff.

15 At one point, the government of the United States as  
16 to Brown, Crosby and Mosley had decided, the Attorney General  
17 had decided that it was fair and just to seek the death  
18 penalty against them. Now it's not? Now the only person  
19 against whom death is the appropriate punishment is the only  
20 right punishment is Kevin McGri ff? It doesn't make any sense.  
21 It doesn't make any sense, and fairness and justice does not  
22 demand the execution of Mr. McGri ff.

23 Russell Allen, Barry Mungo, Alvin Smiley faced the  
24 death penalty, never authorized, the Attorney General said  
25 nope, we're not going to seek the death penalty as to them.

1 Alvin Smiley, not justified or necessary. Barry  
2 Mungo, death not justified or necessary. Climmi ette Jordan,  
3 death not justified or necessary. Dennis Crosby, death not  
4 justified or necessary. Emanuel Mosley -- Emanuel Mosley --  
5 who purchased the services of the others and was paid himself.  
6 Russell Allen, death not justified. Nicole Brown, death not  
7 justified. Nobody. Nobody, just Kenneth McGriff. It doesn't  
8 make any sense. How in the world is death the only right  
9 punishment for Kenneth McGriff, the only right punishment?  
10 How? How can that be?

11 The favorable plea agreements offered to cooperating  
12 witnesses will result in their release from prison. That's a  
13 mitigating factor as to Kenneth McGriff. That is the absolute  
14 truth.

15 Climmi ette Jordan, what do you want the government  
16 to do, Mr. Jordan, if you fulfill your obligation? Basically,  
17 to lower my time, my 15 years.

18 He wants less than 15 years for murder.

19 Emanuel Mosley and Troy Singleton. So, two murders?  
20 Yes. How much time are you facing? Life. You're facing life  
21 imprisonment? Yes. You're still facing life imprisonment?  
22 Yes. If you hadn't cooperated, what sentence would you get?  
23 The death penalty.

24 (Continued on next page.)  
25



1 MS. BARRETT: (Continuing.)

2 What is that you are hoping to receive as part of  
3 your agreement with the government?

4 Less than life. Home some day, less than life.

5 Barry Mungo, why did you kill Eric Smith?

6 For money.

7 Eric Smith didn't kill his best friend. He killed  
8 him for money.

9 Why did you kill Troy Singleton?

10 For money.

11 He didn't think Troy Singleton was out to get him in  
12 retaliation for the death of Eric Smith. He didn't think  
13 that. He did it for money.

14 When did you plead guilty to those two murders?

15 Yesterday.

16 Do you think you'll serve more than twenty years?

17 I don't know.

18 So you think it's possible that it will be less,  
19 correct?

20 I don't know.

21 You hope it's less?

22 Yes.

23 He's hoping for less than twenty years. He murdered  
24 four people, and if you think for one minute that the  
25 government wouldn't -- he didn't think the government was

1 going to find out about that murder that he told them about,  
2 remember the murder with E-Bay, the murder that wasn't charged  
3 here? First he murdered someone when he was seventeen years  
4 old. Then he murdered Troy Singleton and Eric Smith.  
5 Actually, with Troy Singleton he fired a bullet in his dead  
6 body so that he'd be paid. And E-Bay was already under arrest  
7 for other charges.

8 Don't you think that once he -- the government told  
9 him you'd better tell us everything about yourself and we will  
10 give you a pass, don't you think that he thought oh oh, I'd  
11 better tell them about this other murder. This was not he  
12 volunteered, he just brought it up, that he didn't have to.

13 The person -- his co-perpetrator was already under  
14 arrest. Any day now the co-perpetrator could have implicated  
15 him and then what would have happened?

16 Comparative culpability, I want you to look and  
17 think about the aggravating factors that are alleged as to  
18 Mr. McGriff and then think about the people who are going to  
19 get life sentences or go home because the government decided  
20 not to seek the death penalty against them.

21 Do you think for one minute that any of these  
22 aggravating factors do not apply to them?

23 Substantial planning and premeditation, every person  
24 associated with these crimes engaged in substantial planning  
25 and premeditation.

1 Murder by or for payment. Mr. Mosley had both ends  
2 of that. He had two aggravating factors alleged against him.  
3 Look at the notice of intent.

4 Two, he not only murdered for pecuniary gain. He  
5 hired somebody. Each and every one of those shooters was  
6 paid.

7 Prior CCE or other serious offenses, how about  
8 Emanuel Mosley? Remember, he pled guilty? He got a  
9 cooperation agreement the first time around. Got seven years  
10 for a prior CCE, when he faced a twenty-year mandatory  
11 minimum.

12 He has a prior CCE. Barry Mungo, he pled guilty to  
13 killing another human being. Another serious offense.

14 Grave risk of harm to others. Who created that  
15 risk? Climmiette Jordan shooting into the crowd, didn't he?

16 Barry Mungo, shooting into the car, not knowing who  
17 is there.

18 Victim impact, the victims are here and they would  
19 be here if the others were here too. The impact is the same.  
20 Their loss, their horrible loss is the same when it comes to  
21 all of the people who participated in these crimes.

22 Future danger from a continuing pattern of violence  
23 and lack of remorse. These guys are going to go home some  
24 day. They are not going to be in the United States  
25 penitentiary for the rest of their lives. They are going to

1 be walking the streets some day.

2 Who presents more of a future danger? Barry Mungo  
3 with four homicides?

4 Mitigating factors, the murders were motivated in  
5 part by Mr. McGri ff's sincere belief that the victims and  
6 others were out to kill him.

7 The government agrees that this is so.

8 Mr. Jones, January 9, 2007, quote, Supreme asked for  
9 Mosley's help killing Eric Smith and he asked for Mosley's  
10 help killing Troy Singleton. Eric Smith, because he wanted  
11 revenge for the killing of Colbert Johnson, Troy Singleton  
12 because he was friends with Eric Smith and the defendant  
13 thought he might retaliate. Mosley agreed.

14 Mosley, who had nothing against these people at all.

15 Mitigating factors, the impact that it will have on  
16 the family and the friends of Kenneth McGri ff, if he is  
17 executed.

18 This mitigating factor I didn't cover in opening,  
19 but I will mention briefly. Participation of the victims in  
20 dangerous and illegal activities themselves.

21 The murder of Colbert Johnson.

22 The pistol whipping and robbery and possible  
23 retaliation, loaded firearms.

24 Another mitigating factor, the evidence of  
25 Mr. McGri ff's guilt is not sufficiently certain to justify

1 sentence of death.

2 The nature of the witnesses should be considered.

3 Some level of doubt.

4 You can be sure enough to convict, but maybe you are  
5 not sure enough to say that someone should die.

6 If Mr. McGri ff is executed, his family and friends  
7 will suffer grief and loss.

8 There can be no doubt about that.

9 David McGri ff, what effect would it have on you, if  
10 Kenny were executed?

11 It would be devastating. To describe it, there's  
12 all types of emotions to run the gamut, from anger, love,  
13 forgiveness. All these emotions would take place. I would  
14 feel a void I felt with my other two brothers. I would hate  
15 to see that happen to my brother Kenny.

16 Barbara McGri ff, what effect would it have on her?

17 It would be basically, tear me a part.

18 Dwight McGri ff, is your brother always someone who  
19 has been there for you?

20 Yes.

21 You love your brother?

22 Unable to answer, remember?

23 If the jury spares his life, would you stay in touch  
24 with your brother while he's incarcerated?

25 Yes.

1 Cathleen Freemantle, and her extended family. All  
2 of them would be touched by this.

3 Joanne, what effect would it have on you, if your  
4 brother was executed?

5 It would leave a hole in my life.

6 And she also said, I didn't get a chance to add this  
7 because it was just yesterday, even though he's not with us,  
8 he helps to keep us strong.

9 That's a reason to spare, those people need a lot of  
10 strength.

11 Irvin Stanley McGri ff.

12 Remember when he said, at least I know where you  
13 are. But he talks to him. He cares about him. He loves him.

14 Mitigating factors, Mr. McGri ff has proven himsel f  
15 to be capable of acts of kindness and generosi ty.

16 You heard Barbara and Joanne testi fy to that.

17 You heard Hermein Ki tching testi fy to that.

18 Latri sha Doug las testi fied how he helped her wi th  
19 her children in getting home safe while she worked for him.

20 Reni ta McMi lli an talked about his work in the  
21 communi ty.

22 Again, this is not to excuse or justi fy anything.  
23 This is just a reason not to vote for death. It is not an  
24 excuse. Not an excuse. Just a reason not to vote for death.

25 There has been more than enough killing already

1 here, more than enough pain, grief, anguish, loss.

2 Why add to that? When a sentence of life  
3 imprisonment without parole is a very, very severe punishment?

4 Mr. McGri ff was attempting to move his life in a  
5 posi tive di recti on.

6 Bentley Morris, the exchanges between Bentley Morris  
7 and Mr. McGri ff. They obviously had a mutual affection for  
8 one another. You heard Mr. Morris testify about him. He  
9 cared about him. He cared about what happened to him. He  
10 will stay in touch.

11 Barbara, Barbara McGri ff, she was trying to help him  
12 move his life in a posi tive di recti on.

13 Reni ta McMi l l an talked about him and his dream.

14 Cathleen Freemantle talked about him and his dream.

15 Latri sha Doug l as talked about how he talked about  
16 how he worked hard, how he tried to get the business going.

17 This is a mi ti ga ting fac tor that has been  
18 over whel mi ng ly proved.

19 Mr. McGri ff's life has value.

20 Well, in addition to the value that it has to his  
21 immediate family that you heard about, you also heard from  
22 Richard Hogan and Gary Cliffton and Erica Ford, all of whom  
23 care about what happens to him and all of whom believe that he  
24 has value to them in their good work in the community. They  
25 believe that he can help them and they know him well enough to

1 know that that is true. They all grew up with him. They were  
2 children together. They know one another. They believe that  
3 he can help in their good work, from prison.

4 And Kenneth McGriff, what did Barbara say? If in  
5 fact they do not put me to death -- would still lend a hand in  
6 helping the best way I can because I would never turn my back  
7 on people in need.

8 He told his sister he would do that. She is the  
9 person who loves him, cares about him and has tried to give  
10 him direction and he has confided in her and he told her he  
11 would do this.

12 So I am asking you to choose life over death. I am  
13 about to hand his life to you. I started out at the  
14 beginning, a couple of days ago, and I told you, that I held  
15 Kenneth McGriff's life in my hand, and Mr. Ruhnke, and we are  
16 turning his life over to you. We are turning the future of  
17 his family over to you.

18 His life has value.

19 It need not be extinguished.

20 And remember when Ms. Cameron was talking about her  
21 loss, her son Eric. She talked about him and said, it's  
22 just -- death is just too much. What do you think she meant  
23 by that?

24 It's too much for everyone. There is grief  
25 everywhere.



1           We don't need more grief.

2           I wanted to close by doing a little analogy, telling  
3 you a story.

4           Many years ago, in the United States, and in many  
5 other countries, the method of execution was by firing squad  
6 and there were six executioners at least, armed with rifles,  
7 who were sent out to put the convicted person to death. When  
8 those people received their rifles, each one of them knew that  
9 when they were loaded, someone had blanks. Why was that?  
10 They had blanks because some day down the road maybe someone  
11 would decide that death wasn't the right punishment and it  
12 would be too late and the -- each of those six could say, but  
13 it might not have been me who killed him. I might have been  
14 the one with the blanks.

15           None of you has blanks. Each vote is required in  
16 order to sentence someone to death. Each of you will be  
17 responsible for the verdict, because all of you must vote for  
18 death if there is to be death.

19           Is death the only right punishment for Kenneth  
20 McGri ff?

21           I ask you to end the cycle of grief for this  
22 community, this family, for all of the families, and for all  
23 of us, and I will ask you for mercy, and I am not ashamed of  
24 it. I am not ashamed of standing in front of you and asking  
25 for mercy, as Mr. Jones predicted. I ask you for mercy. I

1 ask you to end the cycle of grief and spare Kenneth McGri ff' s  
2 life and he will be sentenced for the rest of his life in  
3 prison, a severe, severe punishment.

4 Death is not the only answer here and, therefore,  
5 each and every one of you should vote for a sentence of life  
6 imprisonment, all of you, unanimously. It is not the only  
7 answer. It cannot be.

8 Thank you.

9 THE COURT: Thank you, Ms. Barrett.

10 Do you wish to go forward now? Do you need a few  
11 minutes, Mr. Jones?

12 MR. JONES: It is up to you.

13 THE COURT: You make the call. Does anybody need a  
14 break?

15 I think we can go forward.

16 MR. JONES: Okay.

17 Ladies and gentlemen, I am going to be very brief.  
18 But what I wanted to do first, like Ms. Barrett, is to thank  
19 you for being here. I know that since you were brought down  
20 here in November, answered these questionnaires, came in here,  
21 talked to us about your views of the death penalty, listened  
22 to the evidence, you have been very patient and on behalf of  
23 the United States I thank you for your service.

24 There are a few things that Ms. Barrett said that I  
25 am going to respond to, just to clear it up, and then the

1 judge is going to instruct you on the law.

2 Ms. Barrett started off by talking to you a little  
3 bit about hypocrisy. She said that the other people on the  
4 list that you will have in the jury room from Emanuel Mosley  
5 right down to Climmielte Jordan, that those men should be your  
6 focus.

7 That those men, that Supreme McGri ff hired to go  
8 out and kill Troy Singleton and Eric Smith, that those people  
9 should be your focus, those people who pled guilty to their  
10 crimes, who told the government about crimes they never were  
11 charged with, who came in here and testified on the stand to  
12 tell you about the man who paid them. The defense still  
13 insists that Mr. McGri ff doesn't deserve a death penalty if  
14 they don't.

15 But what weight does that have? What weight does it  
16 have when Supreme McGri ff marks two men for death, hires their  
17 killers, and then he wants you to hold him no more responsible  
18 than the foot soldiers who carried it out?

19 It is up to you what weight to give that argument.

20 Ms. Barrett also talked to you a little bit about  
21 what she called favorable plea agreements. It is up to you to  
22 decide if those are favorable plea agreements. You saw them  
23 before. You had them in the jury room. You can take them  
24 back with you again.

25 Those are precise written clear agreements. They

1 tell you two things.

2 They tell you, first, that if those people lie, they  
3 are going to jail for the rest of their life and there is  
4 nothing the judge can do about it. That's it.

5 And if they tell the truth, the judge is going to  
6 sentence them, and only he knows what sentence they are going  
7 to get. Only he knows if they are ever going to be out on the  
8 streets again. Not the defense, and not the government. He  
9 knows it.

10 The defense also would have you believe that at the  
11 time of these murders Mr. McGri ff was trying to move his life  
12 in a posi tive di rection. He wasn't trying very hard.

13 Did he make a movi e? Yes.

14 Did he put on shows at clubs? Yes.

15 But did he also kill two people while he's doing  
16 that? Yes.

17 And she mentioned to you that Mr. McGri ff has proven  
18 himsel f worthy of acts of kindness, acts of generosity, she  
19 said. She gave you some examples. The wi tnesses gave you  
20 some exampl es.

21 Mr. McGri ff bought ice cream for the local kids. He  
22 threw barbecues. He put on basketball games.

23 As Reverend Hogan told you, that took place back in  
24 the 1980s, at the same time, at the same time Kenneth McGri ff  
25 was running the Supreme Team and selling drugs on the same

1 streets in the same parks and in the same neighborhood.

2 What weight does it have when you are handing out  
3 candy bars at the same time you are passing around heroin?  
4 What weight does that have?

5 There are two more mitigating factors that I want to  
6 go over with you before you retire.

7 The first of those is when Ms. Barrett told you that  
8 at the time of their deaths, Mr. McGri ff was under the sincere  
9 belief that the victims were out to kill him. She put up  
10 something from my opening statement on January the 9th.

11 The only piece of evidence in this case, the only  
12 evidence was that Supreme wanted Eric Smith dead because he  
13 thought Eric Smith killed Colbert Johnson. What is that? Is  
14 that fear? That's revenge. That's revenge.

15 What about Troy Singleton? You heard that Troy  
16 Singleton was Eric Smith's friend. You heard that Troy  
17 Singleton had been in a fight with some of Supreme's friends.

18 But what evidence is there that Supreme McGri ff had  
19 a sincere belief that Troy Singleton was out to kill him?

20 What evidence is there other than a risk he created  
21 himself?

22 But even if there were some evidence of that, even  
23 if, as Ms. Barrett suggested to you, there were any evidence,  
24 any evidence that Supreme sincerely believed that Troy  
25 Singleton was out to get him, how does that in any way lessen

1 his responsibility for these murders?

2 He kills Eric Smith and then he gets worried that  
3 one of his friends might come kill him. Troy Singleton was  
4 murdered because he was unlucky enough to have Eric Smith as a  
5 friend after Eric Smith was murdered. That's it. And Supreme  
6 McGriff has no right, he has no right, to benefit from a fear  
7 of his own creation.

8 And finally, ladies and gentlemen, and most  
9 unbelievably, the defense wants you to find that by  
10 voluntarily choosing to engage in violent criminal conduct,  
11 you will see this in the mitigating factors, that the victims  
12 in this case willingly participated in a dangerous and illegal  
13 activity, a circumstance that contributed to their unfortunate  
14 deaths.

15 Their unfortunate deaths? He has no right to murder  
16 those people and then call their deaths unfortunate. A car  
17 accident is unfortunate. Disease is unfortunate. Murder that  
18 you caused is not unfortunate.

19 Your verdict found him responsible for that and we  
20 ask you to hold him to it.

21 Ladies and gentlemen, when you look at all the  
22 evidence in this case, and when you think about all the  
23 moments in a person's life, the little moments, the big  
24 moments, it leads you back to the ultimate question of what  
25 justice demands. What does justice demand when a man takes

1 away the fathers of children, and then relishes in it?

2 If Kenneth McGriff is sentenced to life, he is going  
3 to live out the rest of his life socializing, doing odd jobs,  
4 watching TV, and, most importantly, getting to see his family  
5 and that's not good enough.

6 Ms. Barrett spoke a little bit about hypocrisy.  
7 Well, Kenneth McGriff wants another chance when he never gave  
8 one to his victims. He wants life when he stole two. He  
9 wants mercy when he showed none.

10 Kenneth McGriff deserves the ultimate penalty for  
11 the horrible crimes he's committed and for the danger he  
12 represents.

13 When you came into this courtroom, each and every  
14 one of you took an oath. You told us and you told the judge  
15 when you were asked that if the government proved its  
16 aggravating factors, if we proved that to you beyond a  
17 reasonable doubt, and if they outweigh the mitigating factors,  
18 you told us, every one of you told us, that you could impose  
19 the death penalty. We ask you to do that now. Follow your  
20 oaths, follow the law. Supreme McGriff has earned this  
21 verdict and it is the verdict that's consistent with the  
22 evidence.

23 Justice demands one sentence for the senseless  
24 deaths of Troy Singleton and Eric Smith, and for that reason  
25 we ask you to return a sentence of death.

1 Thank you for your service.

2 THE COURT: Thank you, Mr. Jones.

3 Now what we are going to do is we will take a little  
4 break. I am just putting some polishing parts to the charge.  
5 It will take me perhaps about twenty minutes or so. So we are  
6 moving along nicely.

7 Don't talk about the case. The next time you come  
8 to court you will hear my instructions on the law.

9 (The following occurred in the absence of the jury.)

10 THE COURT: Please be seated.

11 What I need to do now is just make some edits in a  
12 number of places to the charge, to be consistent with what we  
13 spoke about in terms of prescinding between the mitigating  
14 facts that had been established as compared to those that the  
15 jury has to resolve. That is going to take me a few minutes.  
16 You know that we are conceptually on the same page. I just  
17 want to make the language consistent throughout the charge.

18 So that will take me about fifteen minutes or so.  
19 Then I am going to come back and I am going to show you where  
20 I have made the changes and then we will go forward.

21 MR. JONES: Thank you.

22 THE COURT: Okay.

23 (Recess taken.)

24

25



1 (Court resumed)

2 (Jury not present)

3 THE COURT: All right. Now, I'm going to give you  
4 the revised jury instructions and the revised verdict form.

5 The changes I have made, hopefully, do address what  
6 we spoke about earlier. There will be some further editings  
7 that you will see as I speak to the jurors which will be  
8 self-evident, so there will be some additional changes that  
9 will be made before the instructions are given to the jury. I  
10 plan to give them to the jury. But note on the verdict sheet,  
11 to be consistent with what we spoke about, we changed the  
12 language to eliminate the fact that they may not find any  
13 mitigating factors since now they must find -- so it now reads  
14 in respect to both Smith and Singleton in section five we, the  
15 jury, unanimously find beyond a reasonable doubt that the  
16 aggravating fact or factors found to exist sufficiently  
17 outweigh the mitigating factors, so that death is the  
18 appropriate sentence. So that logically conceptually flows  
19 since we were speaking about there are mitigating factors, and  
20 the changes that I have made throughout the text should  
21 comport with that conceptual change, and if there's any slip  
22 up you will be, I am sure, not bashful to let me know after I  
23 give the charge, and I think we are ready to go. Okay.

24 MR. RUHNKE: Yes.

25 THE COURT: So let's bring in the jurors.

1           We have marked Court Exhibit 32, the proposed  
2 exhibit list, and everybody's in agreement that that is  
3 correct and we'll send it into the jurors.

4           MS. POKORNY: Yes.

5           THE CLERK: All rise.

6           (Jury now present)

7           THE CLERK: You all maybe seated.

8           All right. I told you I'm going to come down and  
9 speak to you in the well.

10          I appreciate your patience, all these details, we  
11 want to try to get them down correctly. The written charge is  
12 27 pages, so it's significantly less than the charge I gave  
13 you on the guilt phase, so we should have this done by  
14 one o'clock and the food will come in at that time, so I think  
15 that time-wise we are well coordinated.

16          I will give you a copy of this also, and I will put  
17 some headings in there, a table of contents. The same  
18 instructions I gave to you before about how to use the charge  
19 as a guide apply here as well. You are not to be drawing any  
20 conclusions from any of the headings I put in here. You  
21 understand they are just there to facilitate and help you  
22 along in your deliberations and I am not going to repeat all  
23 of that again to you.

24          I should get that into probably within a half hour  
25 after I give you the oral charge and you, of course, can start

1 your deliberations while you eat. You know, naturally you can  
2 decide to take an eating break before you start your  
3 deliberations. That is all up to you. Also, you'll have the  
4 rest of day or as much time as you need to make this decision  
5 and if you want to stay later tonight let me know. If you  
6 want to come back on Monday you, of course, will let me know,  
7 but just take whatever time you need knowing that we are here  
8 to offer you whatever comfort and support we can during your  
9 deliberations.

10 Now, that the attorneys have concluded their closing  
11 arguments, it is my responsibility to instruct you on the law  
12 applicable to sentencing in a capital case. As you previously  
13 found the defendant guilty on Count Six (the murder-for-hire  
14 of Eric Smith) and Count Eleven (the murder-for-hire of Troy  
15 Singleton), the sole question before you now is whether or not  
16 the defendant should be sentenced to death on one or both of  
17 those counts. Although there are two capital counts, you  
18 must approach your sentencing decision one count at a time.

19 Some of the instructions I am about to give you  
20 repeat the instructions I gave you in connection with the  
21 guilt phase; others are different. The instructions I am  
22 giving you now are a complete set of instructions on the law  
23 that you are to rely on for this phase of the case.

24 As with the guilt phase, you must accept my  
25 instructions, regardless of any opinion you may have as to

1 what the law is or should be. It would be a violation of your  
2 oaths as jurors to base your decision on any view of the law  
3 other than that which I give you.

4 I cannot stress to you enough the importance of  
5 giving careful and thorough consideration to your decision.  
6 The decision is yours, and yours alone, to make; the law never  
7 requires a jury to impose a death sentence. And whatever your  
8 decision, the Court is required to follow it.

9 Now, although Congress has left it wholly to you to  
10 decide whether the defendant should be sentenced to death, it  
11 has narrowed and channeled your discretion in specific ways by  
12 requiring you to consider and weigh any "aggravating" and  
13 "mitigating" factors that may be present in this case. As I  
14 explained previously, these factors have to do with  
15 circumstances of the crime, or personal traits, character, or  
16 background of the defendant, or anything else relevant to the  
17 sentencing decision. Aggravating factors are those that might  
18 tend to support the imposition of the death penalty. By  
19 contrast, mitigating factors are those that suggest that the  
20 death penalty is not an appropriate sentence in this case.

21 You are called upon, therefore, to evaluate  
22 aggravating and mitigating factors and to make a unique,  
23 individualized choice about whether the defendant should  
24 receive the death penalty. In short, the law does not assume  
25 that every defendant found guilty of murder-for-hire should be

1 sentenced to death. Rather, your decision on the question of  
2 punishment is a uniquely personal judgment which the law, in  
3 the final analysis, leaves up to each one of you.

#### 4 BURDEN OF PROOF

5 The government has the burden of proving beyond a  
6 reasonable doubt that the appropriate sentence for the  
7 defendant is, in fact, the death penalty. Specifically, that  
8 means that the government must prove as to each capital count  
9 all of the following beyond a reasonable doubt: (1) the  
10 existence of a required preliminary factor; (2) the existence  
11 of at least one statutory aggravating factor; (3) the  
12 existence, if any, of certain non-statutory aggravating  
13 factors; and (4) that all of the aggravating factors,  
14 statutory and non-statutory, found to exist sufficiently  
15 outweigh any mitigating factors as to make a sentence of death  
16 appropriate.

17 As I previously explained during the guilt phase, a  
18 reasonable doubt is a doubt based upon reason and common sense  
19 after careful and impartial consideration of the evidence.  
20 Proof beyond a reasonable doubt must be proof of such a  
21 convincing character that a reasonable person would rely and  
22 act upon it without hesitation in the most important matters  
23 of his or her own affairs. Proof beyond a reasonable doubt  
24 does not mean proof beyond all possible doubt.

25 A defendant never has the burden of disproving the

1 existence of anything which the government must prove beyond a  
2 reasonable doubt. The burden is wholly upon the government;  
3 the law does not at all require the defendant to produce  
4 evidence that a particular aggravating factor does not exist  
5 or that death is not an appropriate sentence.

6 The defendant is also not required to assert or  
7 establish any mitigating factors; however, where, as here, the  
8 defendant has asserted one or more mitigating factors,  
9 It is his burden to establish the existence of those  
10 mitigating factors, other than those that have been  
11 established as a matter of law, by a preponderance of the  
12 evidence.

13 To prove something by a preponderance of the  
14 evidence is a lesser standard of proof than proof beyond a  
15 reasonable doubt. To prove something by a preponderance of  
16 the evidence is to prove that it is more likely so than not  
17 so. Thus, if the evidence is equally balanced, you cannot  
18 find that the mitigating factor has been proved.

19 The preponderance of the evidence is not determined  
20 by the greater number of witnesses or exhibits presented.  
21 Rather, it is the quality and persuasiveness of the  
22 information which controls.

1           One final word about the burden of proof: The  
2       assertion of mitigating factors by the defendant does not  
3       affect the requirement that the government prove the  
4       aggravating factors beyond a reasonable doubt.

5           EVIDENCE

6           In making your determinations, you may consider any  
7       information or evidence presented during this penalty phase or  
8       during the earlier guilt phase. For present purposes, the  
9       terms "evidence" and "information" have the same meaning.

10          In deciding what the facts are, you may have to  
11       decide what testimony you believe and what testimony you do  
12       not believe. You may believe all of what a witness said, or  
13       only part of it, or none of it. In deciding what testimony of  
14       any witness to believe, consider the witness's intelligence,  
15       the opportunity the witness had to see or hear things  
16       testified about, the witness's memory, any motives that a  
17       witness may have for testifying a certain way, the manner of  
18       the witness while testifying, whether that witness said  
19       something different at an earlier time, the general  
20       reasonableness of the testimony, and the extent to which the  
21       testimony is consistent with other evidence that you believe.

22          Some of the evidence you heard was in the form of  
23       expert testimony. The expert was allowed to express an  
24       opinion on those matters about which he has special knowledge  
25       and training; his testimony was presented to you on the theory

1 that someone who is experienced in the field can assist you in  
2 understanding the evidence or in reaching an independent  
3 decision on the facts.

4 As I told you during the guilt phase, in weighing  
5 expert testimony, you may consider the expert's  
6 qualifications, his opinions and reasons for testifying, as  
7 well as all of the other considerations that ordinarily apply  
8 when you are deciding whether or not to believe a witness's  
9 testimony. You may give the expert testimony whatever weight,  
10 if any, you find it deserves in light of all the evidence.  
11 You should not, however, accept the expert's testimony merely  
12 because he is an expert; nor should you substitute it for your  
13 own reason, judgment and common sense.

14 As I also told you during the guilt phase, when the  
15 attorneys on both sides stipulate – that is, agree – to the  
16 existence of a fact, you must accept the stipulation and  
17 consider the fact or facts as proven.

18 The law does not permit any witness to state whether  
19 he or she personally favors or opposes the death penalty in  
20 this case; therefore, you should draw no inference either way  
21 from the fact that no witnesses have testified as to their  
22 views on this subject.

23 Finally, I remind you that the attorneys' opening  
24 statements, their questions and their closing arguments is not  
25 evidence.



1           DEFENDANT'S RIGHT NOT TO TESTIFY

2           The defendant did not testify, and he had the right not  
3 to do so. Just as the law placed no burden on the defendant  
4 to prove himself not guilty, there is no burden on the  
5 defendant to prove that he should not be sentenced to death;  
6 instead, the burden is on the prosecution to prove, beyond a  
7 reasonable doubt, that a sentence of death is, in fact,  
8 justified.

9           Accordingly, the defendant's decision not to testify  
10 must not be considered by you in any way, or even discussed,  
11 in arriving at any aspect of your sentencing decision,  
12 including the existence or non-existence of an aggravating or  
13 mitigating factor.

14           SEPARATE DELIBERATIONS

15           With one exception, which I will explain when I come  
16 to it, my instructions apply to both capital counts; however,  
17 you must determine the appropriate sentence for each count  
18 separately. Each count involves a different crime with a  
19 different victim, and you may find differences that would  
20 justify the death penalty for one count, but not the other.

21           THE DELIBERATIVE PROCESS

22           I will now explain the steps you should follow in  
23 considering the very serious issue before you. As I explained  
24 in my preliminary instructions, those steps are: (1)  
25 consideration of a preliminary factor, (2) consideration of

1 statutory aggravating factors, (3) consideration of  
2 non-statutory aggravating factors, (4) consideration of  
3 mitigating factors, and (5) weighing aggravating factors  
4 against mitigating factors.

5 In addition to these instructions, I have prepared a  
6 Special Verdict Form that you will complete. The form follows  
7 the steps I have just listed, and will therefore aid you in  
8 properly performing your deliberative duties.

9 Let me now explain each of the steps in more detail.

10 STEP ONE: PRELIMINARY FACTOR

11 Before you may consider the imposition of the death  
12 penalty for either capital count, you must first unanimously  
13 find that the government has proved beyond a reasonable doubt  
14 the existence of a preliminary factor regarding the  
15 defendant's intent. For both capital counts, the government  
16 alleges a single preliminary factor: That the defendant  
17 "intentionally participated in an act, contemplating that the  
18 life of a person would be taken or intending that lethal force  
19 would be used in connection with a person, other than one of  
20 the participants in the offense, and the victim died as a  
21 direct result of the act." With respect to Count Six, the  
22 other person is Eric Smith and, with respect to Count Eleven,  
23 Troy Singleton.

24 I remind you that a person acts intentionally if he  
25 acts with the intent to do something the law forbids. The

1 person need not be aware of the specific law or rule that his  
2 conduct may be violating, but he must act with the intent to  
3 do whatever it is the law proscribes, in this case causing the  
4 death of another.

5 In Section I of the Special Verdict Form, you will  
6 be asked whether you unanimously find that the government has  
7 proved beyond a reasonable doubt the required preliminary  
8 factor. In the event that you unanimously find, beyond a  
9 reasonable doubt, that the required preliminary factor has  
10 been proved, you will answer "yes"; if you do not unanimously  
11 find that the required preliminary factor has been proved  
12 beyond a reasonable doubt, you will answer "no." You will be  
13 asked to make a finding for each of the two capital counts.  
14 With respect to each count, you should mark the appropriate  
15 space in Section I.

16 As I stated earlier, if you do not unanimously find  
17 that the government has proved beyond a reasonable doubt the  
18 required preliminary factor for a particular count, your  
19 deliberations as to that count will be over and the Court will  
20 impose a sentence of life imprisonment without the possibility  
21 of release.

22 If you do, however, find that the requisite  
23 preliminary factor has been proved, you will go on to Step  
24 Two, which I will now explain to you. I instruct you,  
25 however, that the required preliminary factor is not an

1 aggravating factor and may not be weighed by you in deciding  
2 whether or not to impose a sentence of death.

3 STEP TWO: STATUTORY AGGRAVATING FACTORS

4 If and only if you unanimously find that the  
5 government has proved, beyond a reasonable doubt, the required  
6 preliminary factor as to a particular count, you must then  
7 determine whether the government has proved, beyond a  
8 reasonable doubt, the existence of the following statutory  
9 aggravating factors with respect to that count.

10 For both Count Six and Count Eleven, the government  
11 has alleged three statutory aggravating factors:

12 1. That the defendant "committed the offense after  
13 substantial planning and premeditation to cause the death of a  
14 person";

15 2. That the defendant "procured the commission of  
16 the offense by payment, or promise of payment, of anything of  
17 pecuniary value"; and

18 3. That the defendant "has previously been  
19 convicted of engaging in a continuing criminal enterprise."

20 With respect to Count Six only, the government  
21 alleges as a fourth possible statutory aggravating factor that  
22 the defendant "in the commission of the offense, knowingly  
23 created a grave risk of death to one or more persons in  
24 addition to the victim of the offense."

25 At this point the law directs you to consider and

1 decide as to each count for which you have unanimously found  
2 the existence of the required preliminary factor, the  
3 existence or non-existence of the alleged statutory  
4 aggravating factors specifically claimed by the government.  
5 You are reminded that to find the existence of a statutory  
6 aggravating factor as to a particular count, your decision  
7 must be unanimous and beyond a reasonable doubt. Any finding  
8 that one or more of these factors has been proven must be  
9 based on the defendant's personal actions and intent.

10 Let me now instruct you in detail on the specific  
11 elements necessary for the government to prove each of these  
12 statutory aggravating factors.

13 1. Substantial Planning and Premeditation

14 The first statutory aggravating factor alleged with  
15 respect to both capital counts is that the defendant committed  
16 the offenses after substantial planning and premeditation.

17 "Planning" means mentally formulating a method for  
18 doing something or achieving some end.

19 "Premeditation" means thinking or deliberating about  
20 something and deciding beforehand whether to do it.

21 "Substantial" planning and premeditation means a  
22 considerable or significant amount of planning and  
23 premeditation.

24 To find that the government has satisfied its burden  
25 of proving beyond a reasonable doubt that the defendant

1 engaged in substantial planning and premeditation to cause the  
2 death of a person, you must unanimously agree that the  
3 particular object of the substantial planning and  
4 premeditation was to cause the death of a person.

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2. Procurement by Payment

The second statutory aggravating factor alleged with respect to each capital count is that the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value. In other words, the government alleges, with respect to Count Six, that the defendant paid or promised to pay someone to kill Eric Smith and, with respect to Count Eleven, that the defendant paid or promised to pay someone to kill Troy Singleton.

As I explained during the guilt phase, "anything of pecuniary value" means money, negotiable instruments, or anything else having some economic value, benefit or advantage.

3. Conviction for Continuing Criminal Enterprise

The third statutory aggravating factor alleged with respect to both capital counts is that the defendant has previously been convicted of engaging in a continuing criminal enterprise. During the guilt phase, the parties stipulated that in 1988, the defendant was convicted of engaging in a continuing criminal enterprise; the stipulation was admitted as Exhibit 507 and the judgment of conviction as Exhibit 28.

4. Grave Risk of Death to Others (Count Six only)

The fourth statutory aggravating factor, which the government alleges with respect to Count Six only, is that in committing the offense charged in that count, the defendant

1 knowingly created a grave risk of death to one or more persons  
2 in addition to the victim of the offense.

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1           The term "grave risk of death" requires no further  
2 definition. The government must also prove, however, that the  
3 defendant "knowingly created" such a risk. As I told you  
4 during the guilt phase, a person acts knowingly if he acts  
5 purposely and voluntarily and not because of a mistake,  
6 accident or other innocent reason.

7           In Section II of the Special Verdict Form, you will  
8 be asked to indicate whether the government has proved beyond  
9 a reasonable doubt the alleged statutory aggravating factors  
10 that I have just described to you. In the event that you  
11 unanimously find, beyond a reasonable doubt, that a statutory  
12 aggravating factor has been proved beyond a reasonable doubt,  
13 you will answer "yes"; if you do not unanimously find that a  
14 statutory aggravating factor has been proved beyond a  
15 reasonable doubt, you will answer "no." You will be asked to  
16 make a finding for each of the statutory aggravating factors  
17 alleged in connection with each of the two capital counts.

18           If you do not unanimously find that the government  
19 has proved at least one statutory aggravating factor beyond a  
20 reasonable doubt with respect to a particular count, your  
21 deliberations for that count will be over and the Court will  
22 impose a sentence of life imprisonment without the possibility  
23 of release. If, on the other hand, you do unanimously find  
24 that the government has proved at least one statutory  
25 aggravating factor beyond a reasonable doubt for a particular

1 count, you will go on to Step Three, which I will now explain  
2 to you.

3 STEP THREE: NON-STATUTORY AGGRAVATING FACTORS

4 If and only if you have unanimously found that, with  
5 respect to a particular count, the government has proved,  
6 beyond a reasonable doubt, the existence of the required  
7 preliminary factor and at least one statutory aggravating  
8 factor, you must then consider whether the government has  
9 proved the existence of non-statutory aggravating factors with  
10 regard to the same count. You must all agree that the  
11 government has proved a non-statutory aggravating factor  
12 beyond a reasonable doubt before you may consider that factor  
13 in your deliberations.

14 The law permits you to consider and discuss only the  
15 two non-statutory aggravating factors listed below. You are  
16 not free to consider any other facts in aggravation that you  
17 conceive of on your own.

18 For both capital counts, the government alleges the  
19 same two non-statutory aggravating factors; they are as  
20 follows:

21 1. That the defendant "caused injury, harm, and  
22 loss to the victim, the victim's family, and the victim's  
23 friends." The government alleges that this factor is  
24 demonstrated by (a) "the victim's personal characteristics as  
25 an individual human being", and (b) "the impact of the death

1 upon the victim's family and friends." These allegations are  
2 self-explanatory, and do not require further instruction.

3 2. That if incarcerated for life without parole,  
4 the defendant nevertheless "poses a risk of future  
5 dangerousness." The government alleges that this factor is  
6 demonstrated by (a) "a continued pattern of violence,"  
7 including, but not limited to, the defendant's  
8 "contemporaneous convictions for multiple murders"; and (b)  
9 "lack of remorse."

10 Let me say a few words about this second  
11 non-statutory aggravating factor. First, you must limit your  
12 consideration to the risk of future dangerousness that the  
13 defendant poses while serving a life sentence in prison  
14 without the possibility of release. Second, you are to  
15 consider the government's allegations that the defendant has  
16 engaged in a continued pattern of violence and has  
17 demonstrated a lack of remorse only insofar as you think they  
18 tend to prove that the defendant poses a risk of future  
19 dangerousness. Third, in considering whether the defendant  
20 poses such a risk, I remind you that the defendant has no  
21 burden to demonstrate that an aggravating factor does not  
22 exist; thus, for example, he has no burden to prove  
23 remorsefulness. While you may consider the evidence that the  
24 defendant has put forth to show that he does not pose a risk  
25 of future dangerousness, you must remember that the burden is

1 on the government to prove beyond a reasonable doubt that he  
2 does pose such a risk.

3 Again, your findings regarding these non-statutory  
4 factors must be separate and unanimous with regard to each  
5 capital count you are considering.

6 In Section III of the Special Verdict Form, you will  
7 be asked to indicate whether the government has proved beyond  
8 a reasonable doubt the alleged non-statutory aggravating  
9 factors that I have just described to you. In the event that  
10 you unanimously find, beyond a reasonable doubt, that a  
11 non-statutory aggravating factor has been proved, you will  
12 answer "yes"; if you do not unanimously find that a  
13 non-statutory aggravating factor has been proved beyond a  
14 reasonable doubt, you will answer "no." Again, you will be  
15 asked to make a finding for each of the non-statutory  
16 aggravating factors alleged in connection with each of the two  
17 capital counts.

18 Unlike the rules relating to the preliminary factor  
19 and the statutory aggravating factors, you are not required to  
20 find a non-statutory aggravating factor with regard to a  
21 particular count before you may consider the death penalty as  
22 the possible sentence for that count. Rather, the law only  
23 requires that before the jury may consider a non-statutory  
24 aggravating factor, the jury must first unanimously agree that  
25 the government has proved beyond a reasonable doubt the

1 existence of that factor as to that count. Remember, however,  
2 that unless you are unanimous that the existence of a  
3 particular statutory or non-statutory aggravating factor has  
4 been proven by the government beyond a reasonable doubt, you  
5 may not give that factor any further consideration whatsoever  
6 during your deliberations.

7 After you have completed your findings regarding the  
8 existence or non-existence of non-statutory aggravating  
9 factors, you will proceed to Step Four, which I will now  
10 explain to you.

#### 11 STEP FOUR: MITIGATING FACTORS

12 Before you may consider the appropriate punishment  
13 for any of the capital counts for which you have unanimously  
14 found the existence of the required preliminary factor and at  
15 least one statutory aggravating factor, you must consider  
16 whether the defendant has proved the existence of any  
17 mitigating factors with regard to that count.

18 A mitigating factor is not offered to justify or  
19 excuse the defendant's conduct; rather, it is simply something  
20 about the defendant's life or character, or about the  
21 circumstances surrounding the particular capital offense, or  
22 any other relevant consideration, that would suggest, in  
23 fairness, that a sentence of death is not an appropriate  
24 punishment in this case.

25 The defense offers 16 factors for your

1     consideration, namely:

2             1.     If not sentenced to death, Mr. McGri ff will be  
3     punished by a sentence of lifetime imprisonment with no  
4     possibility of release.

5             2.     Emanuel Mosley ("Manny Dog") will not be  
6     sentenced to death for his role in the murders of Mr. Smith  
7     and Mr. Singleton.

8             3.     Barry Mungo ("Barry Broughton") will not be  
9     sentenced to death for his role in the murders of Mr. Smith  
10    and Mr. Singleton.

11            4.     Alvin Smiley will not be sentenced to death for  
12    his role in the murders of Mr. Smith and Mr. Singleton.

13            5.     Russell Allen ("Les") will not be sentenced to  
14    death for his role in the murder of Mr. Smith.

15            6.     Dennis Crosby ("How about") will not be  
16    sentenced to death for his role in the murders of Mr. Smith  
17    and Mr. Singleton.

18            7.     Nicole Brown will not be sentenced to death for  
19    her role in the murder of Mr. Smith.

20            8.     Climmi ette Jordan will not be sentenced to  
21    death for his role in the murder of Mr. Smith.

22            9.     The favorable plea agreements offered to the  
23    cooperating witnesses in this case is something that weighs  
24    against imposition of a sentence of death for Mr. McGri ff.

25            10.    By voluntarily choosing to engage in violent

1 criminal conduct, the victims in this case willingly  
2 participated in dangerous and illegal activities, a  
3 circumstance that contributed to their unfortunate deaths.

4 11. The murders in this case were motivated, in  
5 part, by Mr. McGri ff' s sincere belief that the victims, and  
6 others, were out to kill him.

7 12. The evidence does not establish Mr. McGri ff' s  
8 guilt of the capital crimes with sufficient certainty to  
9 justify imposition of a sentence of death.

10 13. If Mr. McGri ff is executed, his friends and  
11 family will suffer grief and loss.

12 14. Mr. McGri ff has proven himself to be capable of  
13 acts of generosity and  
14 kindness.

15 15. At the time of the murders, Mr. McGri ff was  
16 attempting to move his life in a positive direction.

17 16. Mr. McGri ff' s life has value.

18 (Continued on next page)  
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1           THE COURT: (Continuing) Although most of the  
2 mitigating factors submitted by the defendant require little  
3 elaboration beyond the ordinary meaning, I wish to instruct  
4 you further on a few of them.

5           First, I instruct you mitigating factors 1 through  
6 8, are true statements, are the witnesses, cooperating  
7 witnesses, are true statements. It is true, in other words,  
8 for example, Barry Mungo will not be sentenced to death for  
9 the two individuals; the others are true as well.

10           Second, mitigating factors 2 through 8 ask you to  
11 consider a number of the other individuals who could have  
12 faced the death penalty for the murders of Eric Smith and/or  
13 Troy Singleton, but are not. In evaluating the individual  
14 circumstances of each such individual, you are asked in  
15 essence: If fairness and justice can be served by declining  
16 to seek the death penalty in those cases, is there any reason  
17 that fairness and justice cannot similarly be served by  
18 declining to vote for the death penalty in this case.

19           In evaluating this issue, you should consider the  
20 roles played in the murders by these other individuals and  
21 what you have learned about their background and history.  
22 Thus, in weighing these mitigating factors, you may consider  
23 whether it is fair and reasonable that the defendant faces the  
24 death penalty, while these particular individuals do not.

25           Similar considerations come into play in connection



1 with mitigating factor number 9, which asks you to consider  
2 whether the favorable plea agreements offered through the  
3 cooperating witnesses in this case is something that weighs  
4 against imposition of a sentence of death for the defendant.  
5 In that respect, all the cooperating witnesses who testified  
6 before you during the guilt phase are facing life imprisonment  
7 without the possibility of release for their roles in the  
8 murders of Eric Smith and/or Troy Singleton. If those  
9 witnesses fully comply with their cooperation agreements, the  
10 government will, under the terms of those agreements, inform  
11 the witness' sentencing judge of the nature and extent of  
12 their cooperation. I think I will probably be the sentencing  
13 judge in all those cases.

14           The sentencing judge will then decide whether to  
15 impose a sentence of less than life in prison without the  
16 possibility of release. Because of the value of the  
17 government's cooperating witnesses, sentencing judges usually  
18 sentence cooperators to less time than they otherwise would  
19 receive if not for their cooperation. I have total discretion  
20 there.

21           Finally, mitigating factor number 12 asks you to  
22 consider whether the evidence establishes the defendant's  
23 guilt of the capital crimes with sufficient certainty to  
24 justify imposition of a sentence of death. This factor is not  
25 intended to call into question your verdict at the first stage

1 of the trial. It does, however, where you found proof beyond  
2 a reasonable doubt. It does however require you to think  
3 about the level of certainty that you feel regarding the  
4 defendant's guilt of one or both of the capital crimes.

5 Proof of guilt beyond a reasonable doubt does not  
6 require 100 percent certainty. I explained to you that  
7 before. It may be in your individual views of the evidence a  
8 difference between proof that was sufficient to find guilt and  
9 proof that is sufficient to impose a sentence of death on  
10 another human being.

11 Thus, if you were sure enough of the defendant's  
12 guilt to convict him but harbor some level about his guilt  
13 that makes you uncomfortable about voting for the death  
14 penalty, you should find this mitigating factor proven.

15 The law regarding mitigating factors differs from  
16 the law regarding aggravating factors in several important  
17 respects which I will now explain to you.

18 As I just told you, mitigating factors 1 through 8  
19 have been established as true. With respect to the remaining  
20 mitigating factors, you are to determine whether the defendant  
21 has established them by the requisite burden of proof, that is  
22 the preponderance of the evidence.

23 As I previously explained, it is the defendant's  
24 burden to establish a mitigating factor only by a  
25 preponderance of the evidence. Mitigating factors 1 through 8

1 you need not engage in that process because they're  
2 established as factually correct.

3           This is a lesser standard of proof than proof beyond  
4 a reasonable doubt. I'm telling you about preponderance of  
5 the evidence, again for the fourth time. A factor is  
6 established by a preponderance of the evidence if its  
7 existence is shown to be more likely so than not so. In other  
8 words, a preponderance of the evidence means such evidence as,  
9 when considered and compared with that opposed to it, produces  
10 in your mind the belief that what is sought to be established  
11 is, more likely than not, true. If, however, the evidence is  
12 equally balanced, you cannot find that the factor has been  
13 proved. I'm repetitious; my apologies.

14           Second, unlike aggravating factors, which you must  
15 unanimously find proven beyond a reasonable doubt before  
16 considering them in your sentencing decision, the law does not  
17 require unanimity with regard to mitigating factors.  
18 Unanimity is required in terms of the government's burden, not  
19 in terms of finding mitigating factors 1 through 8 have been  
20 established by the preponderance of the evidence in respect to  
21 those mitigating factors which you must consider in terms of  
22 whether they've been factually established.

23           Again, since mitigating factors 1 through 8, have  
24 been have been established as true, you must all consider them  
25 in your sentencing decision. You have no option in that

1 respect.

2 With respect to the remaining mitigating factors,  
3 there's 9 through 16, any one juror whose persuaded of the  
4 existence of mitigating factors must consider it in his or her  
5 sentencing decision. You may have different views of this  
6 type of thing. You consider this. If any one of you find it,  
7 that means that individual juror must consider that in  
8 weighing the result.

9 Finally, while the law limits your consideration of  
10 aggravating factors to those specifically alleged by the  
11 government, the law does not limit your consideration of  
12 mitigating factors to those articulated in advance. Thus in  
13 addition to the 16 mitigating factors specifically raised by  
14 the defendant, the law permits each of you to consider  
15 anything about the circumstances of the offense or anything  
16 about the defendant's background, record or character or any  
17 other relevant consideration that you individually believe  
18 mitigates against the imposition of the death penalty. If  
19 there's any mitigating factors that's not argued by the  
20 defendant's attorney but which any juror, whether on his or  
21 her own or with others, finds to be establish by a  
22 preponderance of the evidence, that juror is free to consider  
23 it in his or her sentencing determination.

24 You may have other thoughts here in terms of  
25 mitigating. You can't engage in speculation as far as the

1   aggravating factors. The door is open to you to consider  
2   whether you believe there may be other mitigating factors.

3           The existence of a mitigating factor is a distinct  
4   consideration for whatever weight, if any, should ultimately  
5   be given that factor in your deliberations. For example, any  
6   number of jurors might first find a particular mitigating  
7   factor is factually true, i.e., that is the factor exists --  
8   where the jurors are called upon to make this factual  
9   determination -- but those jurors as individuals might later  
10   choose to give mitigating factors different levels of  
11   significance during the weighing process.

12           Section IV of the Special Verdict Form, you will be  
13   asked to identify any mitigating factors, other than those  
14   that have already been established as a matter of law, that  
15   one or more of you independently finds to exist by a  
16   preponderance of the evidence. Since such a finding you need  
17   not be made unanimously, you will only be asked to report the  
18   total number of jurors who individually find a particular  
19   mitigating factor to be established by a preponderance of the  
20   evidence.

21           In addition, since you are not limited to  
22   consideration of the 16 mitigating factors offered by the  
23   defendant, there will be space on the form to indicate any  
24   additional mitigating factor or factors that any juror has  
25   individually found to be established by a preponderance of the

1 evidence, as with the factors offered by the defendant, you  
2 will be asked to report the total number of jurors who have  
3 considered such factor or factors. You'll see all that I laid  
4 out when I give you the verdict form.

5 After you have completed your findings regarding the  
6 existence or nonexistence of the mitigating factors, you will  
7 proceed to Step Five, which I'll now explain to you. That is  
8 the all important weighing of factors. Just let me take a  
9 water break.

10 I feel conspicuous when I take water.

11 Anybody want to stretch?

12 If and only if you unanimously find beyond a  
13 reasonable doubt that the government has proved the existence  
14 of the required preliminary factor and at least one statutory  
15 aggravating factor with regard to any capital count, and after  
16 you then determine whether the government has proved beyond a  
17 reasonable doubt the existence of any non-statutory  
18 aggravating factors with regard to that count, and after you  
19 then determine whether the defendant has proved the existence  
20 of any mitigating factor that must be established by a  
21 preponderance of the evidence, you must then engage in a  
22 weighing process with regard to that count, each count. This  
23 weighing process asks whether you are unanimously persuaded  
24 beyond a reasonable doubt that the aggravating factor or  
25 factors you have found to exist sufficiently outweigh the

1 mitigating factors, whether established as a matter of law or  
2 by a preponderance of the evidence, to call for a sentence of  
3 death on the particular capital count you're considering.

4 In the event you unanimously find that the required  
5 preliminary and at least one statutory aggravating factor has  
6 been proved beyond a reasonable doubt with respect to both  
7 capital counts, you're to conduct this weighing process  
8 separately with regard to each count.

9 Each juror must individually decide whether the  
10 facts and circumstances in this case as to each count call for  
11 death as the appropriate sentence. In determining the  
12 appropriate sentence for the count you are considering, all of  
13 you must independently weigh the aggravating factor or factors  
14 that you unanimously found to exist with regard to that count,  
15 whether statutory or non-statutory and each of you must weigh  
16 the mitigating factors. You are not to weigh the required  
17 preliminary factor I told you as part of this process. I  
18 explained that to you before.

19 In engaging in the weighing process, you must avoid  
20 any influence of passion, prejudice, or any other arbitrary  
21 consideration. Your deliberations should be based upon the  
22 evidence you have seen and heard and the law on which I've  
23 instructed you.

24 Again, whether or not the circumstances of this case  
25 call for sentence of death is a decision that the law leaves

1 entirely to each you. Remember all 12 jurors must agree  
2 beyond a reasonable doubt that death is in fact the  
3 appropriate sentence before the jury can impose the death  
4 penalty and that no jury is ever required by the law to impose  
5 a death sentence. The decision, once again is yours as  
6 individuals to make.

7           The process of weighing aggravating and mitigating  
8 factors against each other in order to determine the proper  
9 punishment is by no means a mechanical process. In other  
10 words, you should not simply count the total number of  
11 aggravating and mitigating factors and reach a decision based  
12 on which number is greater. Rather, you should carefully  
13 consider the weight and value of each factor. In weighing  
14 these various factors, you are called upon to make a unique  
15 individual judgment about the sentence the defendant should  
16 receive.

17           The law contemplates different factors may be given  
18 different weights or values by different jurors. Thus, you  
19 may find that one mitigating factor outweighs all aggravating  
20 factors combined or that the aggravating factors proved do not  
21 standing alone justify imposition of a sentence of death  
22 beyond a reasonable doubt.

23           Similarly, you may instead find a single aggravating  
24 factor sufficiently outweighs beyond a reasonable doubt all  
25 mitigating factors combined so as to justify a sentence of



1 death.

2 I stopped because we all do that, somebody walks in,  
3 it's an open courtroom, everybody can come. I stop because my  
4 attention is the same, I look to see who came in here. We're  
5 all back focusing on me now? I'm better than looking at them.

6 Similarly, you may instead find a single aggravating  
7 factor sufficiently outweighs beyond reasonable doubt all  
8 mitigating factors combined so as to justify a sentence of  
9 death. Any one of you is free to decide a death sentence  
10 should not be imposed so long as, based on the evidence and  
11 your sense of justice, you conclude that the proven individual  
12 factors do not sufficiently outweigh mitigation such that the  
13 death penalty should be imposed.

14 Each juror is to decide individually what weight or  
15 value is to be given to a particular aggravating or mitigating  
16 factor in a decision-making process. Bear in mind, however,  
17 in order to find that a sentence of death is appropriate for a  
18 particular count, the jurors must be unanimous in their  
19 conclusion beyond a reasonable doubt that the aggravating  
20 factor or factors proven as to that count sufficiently  
21 outweigh the mitigating factors.

22 In Section V of this Special Verdict Form you'll be  
23 asked whether the government has proved beyond a reasonable  
24 doubt that a sentence of death is called for. You will make  
25 this finding separately for any of the capital counts for

1 which you've unanimously found the requisite preliminary  
2 factor and at least one statutory aggravating factor proved  
3 beyond a reasonable doubt. I remind that with respect to both  
4 count six and count 11, the only possible sentences are one,  
5 death or two, life imprisonment without the possibility of  
6 release.

7           Thus, if after engaging in the balancing process  
8 I've just described and engaging in thorough deliberation, you  
9 unanimously find beyond a reasonable doubt that a sentence of  
10 death is called for in a particular count, you will so  
11 indicate on the verdict form.

12           If you unanimously find a sentence of death is not  
13 called for on a particular count, you will so indicate on the  
14 verdict form.

15           If after engaging in the balancing process I've  
16 described to you and following thorough deliberations, all 12  
17 members of the jury do not unanimously find beyond a  
18 reasonable doubt that the defendant should be sentenced to  
19 death on a particular count, then you may not impose the death  
20 penalty for that count. You should so indicate on the verdict  
21 form.

22           Before you reach any conclusion based on the lack of  
23 unanimity, however, you should continue your discussions until  
24 you're fully satisfied that no further discussion will lead to  
25 a unanimous decision. Only in the event that you do determine

1 that no further discussion will lead to unanimous decision  
2 should you so advise the court by marking the appropriate  
3 space on the Special Verdict Form.

4 You can consider whether you unanimously decide  
5 death is proper or whether you unanimously decide whether life  
6 in prison without release is proper. You are to give that due  
7 deliberation. You don't just go in there, have a little  
8 count, come out and say we can't unanimously agree. You have  
9 to try to come to unanimous agreement as to whether death is  
10 the proper punishment or come to unanimous agreement if it is  
11 not.

12 If you can't, after due deliberation, after  
13 carefully considering everything that you should be  
14 considering, as we discussed, after you discussed matter,  
15 can't come to agreement, in that event you come back and you  
16 let me know that. In that case, the sentence to be imposed  
17 will be life imprisonment without parole.

18 As I've told you repeatedly, the defendant will  
19 receive the death penalty only if you unanimously find beyond  
20 a reasonable doubt that have that is the appropriate penalty.  
21 If you do not make such a finding -- whether because  
22 unanimously find the death penalty is not the appropriate  
23 sentence CORRECTION OR CHECK or because you are unable after  
24 thorough deliberation to reach a unanimous decision, as to  
25 whether the death penalty is the appropriate sentence, then he

1 will receive a sentence of life in prison without the  
2 possibilities of release.

3 I also remind you whatever your decision, I'm  
4 required by law to abide by it and to sentence the defendant  
5 accordingly.

6 In your consideration of whether the death penalty  
7 is appropriate, you must not consider the race, color,  
8 religious beliefs, national origin or sex of either the  
9 defendant or the victims. You are not to return a sentence of  
10 death unless you return a sentence of death for the crime in  
11 question without regard to the race, color, religious beliefs,  
12 national origin or sex of either the defendant or the victim.

13 To emphasize the importance of this consideration,  
14 the final section of the Special Verdict Form, Section VI,  
15 contains a certification required by law. Congress believes  
16 it's so important those factors must reflect your signature.

17 Each juror should carefully read the statement, sign  
18 his or her jury number, just the number in the appropriate  
19 place that the statement accurately reflects the matter that  
20 each of you reached an individual decision. That  
21 certification I should have. This is what it says. By  
22 signing below, using only your juror number, each of you  
23 individually certifies that consideration of the race, color,  
24 religious beliefs, national origin or sex of the defendant or  
25 the victim was not involved in reaching your individual

1 decision. Each of you further certifies that you, as an  
2 individual, would have made the same recommendation regarding  
3 the sentence for the crime or crimes in question regardless of  
4 the race, color, religious beliefs, national origin or sex of  
5 the individual or the victim and you'll see that  
6 certification.

7 In conclusion, I have now outlined for you the rules  
8 of law applicable to your consideration of the death penalty  
9 and the process by which you should determine the facts and  
10 weigh the evidence.

11 In a few minutes you will retire to the jury room.  
12 The importance of your deliberations is obvious. Again, I  
13 again remind you you can return a decision sentencing the  
14 defendant to death only if all 12 of you are unanimously  
15 persuaded beyond a reasonable doubt that the death sentence is  
16 in fact appropriate.

17 If during your deliberations it becomes necessary to  
18 communicate with me for any reason, simply send me a note  
19 signed by your foreperson, same instructions I gave you  
20 before. Do not attempt to communicate with the court or any  
21 other court personnel by any means other than a signed  
22 writing. I will not communicate with any member of the jury  
23 on any subject touching on your sentencing decision other than  
24 in writing or orally here in open court; same process we did  
25 before.

1           When you have reached a decision, send me a noted  
2 signed by your foreperson that you have reached a decision.  
3 Do not include what the decision is in your note. In no  
4 communication with the court prior to a verdict should you  
5 ever give a numerical count where the jury stands in its  
6 deliberations. Of course, if you want the readbacks, like  
7 before, you can call for them. Maybe you want some testimony.

8           We have the exhibits that were referenced  
9 specifically that were added to the prior exhibits for this  
10 particular phase. We have, once again, compiled them and I'll  
11 give that to you or you can call for any that you want just  
12 like you did before.

13           Whichever decision you reach, the foreperson must  
14 also sign and fill out the Special Verdict Form, accordingly  
15 be prepared to report to the court your findings and  
16 sentencing decision. That means you (indicating). Please  
17 check and recheck the verdict form to make sure it accurately  
18 reflects your findings. There's a bunch of things I have to  
19 attend to.

20           One final word about your deliberations, as I spoke  
21 to you about before. Please discuss all aspects of the  
22 sentencing issues among yourselves with candor, frankness, but  
23 also with a due regard and respect for the opinions of one  
24 another. This is the most serious decision the law asks  
25 jurors to make. It can't be any more serious. Each of you

1 must decide it for yourself, not merely go along with the  
2 conclusion of your fellow jurors.

3 In the course of your deliberations, no juror should  
4 surrender his or conscientious believe as to what is the  
5 truth, what is the weight and effect of the evidence or what  
6 should be the outcome as determined by the jurors' individual  
7 conscience and evaluation of the case.

8 Remember that the parties and the Court are relying  
9 upon you to give full, considered and mature consideration to  
10 this decision. By so doing, you carry out to your fullest the  
11 oath as jurors you'll well and truly try the issues of this  
12 case and enter a just result.

13 I'm going to pass the verdict form to you now and  
14 explain it all to you. I think it's good first to  
15 collectively take a look at it.

16 I have 11. I'm going to give my foreperson two.  
17 One will be the original one. The rest of you can pass the  
18 rest out amongst yourselves. I appreciate it. Here are your  
19 two (handing).

20 I'll read it with you. In respect to the  
21 certification, what we're going to do also is we're going to  
22 give you that certification where you'll sign your names, now  
23 your name is being disclosed but to protect your anonymity, it  
24 will be put in a sealed envelope. That will be kept by the  
25 court. During the deliberations we'll send it to you. That

1 will be signed by you, put in the envelope and given to the  
2 marshals so you'll have them all. They get filed secretly.  
3 You need not be concerned about that.

4 (Continued on next page.)  
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1 The public portion of the certification you will just certify  
2 by your number, okay.

3 SECTION I: PRELIMINARY FACTOR:

4 1. Do you unanimously find that the government has  
5 proved beyond a reasonable doubt that the defendant, Kenneth  
6 McGri ff, intentionally participated in an act contemplating  
7 that the life of a person would be taken or intending that  
8 lethal force would be used in connection with a person, other  
9 than one of the participants in the offense, and the victim  
10 died as a direct result of the act:

11 (A) with respect to Count Six (Eric Smith) yes or  
12 no?

13 (B) With respect to Count Eleven (Troy Singleton),  
14 yes or no?

15 If you answered "no" to both questions stop your  
16 deliberations and complete only the certification contained in  
17 Section VI.

18 If you answered "yes" to either question, go on to  
19 Section II.

20 SECTION II: STATUTORY AGGRAVATING FACTORS:

21 Complete Section II only with respect to those  
22 counts, if any, for which you answered "yes" in Section I.

23 1. Do you unanimously find that the government has  
24 proved beyond a reasonable doubt that Mr. McGri ff committed  
25 the offense after substantial planning and premeditation to

1 cause the death of another person.

2 A. With respect Count Six (Eric Smith), yes or not?

3 B. With respect to Count Eleven (Troy Singleton),  
4 yes or no?

5 2: Do you unanimously find that the government has  
6 proved beyond a reasonable doubt that Mr. McGri ff procured the  
7 commi ssi on of the offense by payment or promi se of payment of  
8 anythi ng of pecuni ary val ue:

9 A. With respect Count Six (Eric Smith), yes or no?

10 B. With respect to Count Eleven (Troy Singleton),  
11 yes or no?

12 Section II: STATUTORY AGGRAVATING FACTORS:

13 3. Do you unanimously find that the government has  
14 proved beyond a reasonable doubt that Mr. McGri ff has  
15 previ ousl y been convi cted of enga gi ng i n a conti nui ng cri mi nal  
16 enterpri se:

17 A. With respect Count Six (Eric Smith), yes or no?

18 B. With respect to Count Eleven (Troy Singleton),  
19 yes or no?

20 4. Do you unanimously find that the government has  
21 proved beyond a reasonable doubt that i n the commi ssi on of the  
22 offense, Mr. McGri ff knowi ngl y created a grave ri sk of death  
23 to one or more person i n addi ti on to the victi m of the  
24 offense:

25 A. With respect to Count Six (Eric Smith), yes or

1 no?

2 If you answered "no" to all questions in Section II,  
3 stop your deliberations and complete only the certification  
4 contained in Section VI.

5 If you answered "yes" to any question in Section II,  
6 go on to Section III.

7 SECTION III: NON-STATUTORY AGGRAVATING FACTORS:

8 Complete Section III only with respect to those  
9 counts, if any, for which you (a) answered "yes" in Section I,  
10 and (b) unanimously found in Section II at least one statutory  
11 aggravating factor proved beyond a reasonable doubt.

12 1. Do you unanimously find that the government has  
13 proved beyond a reasonable doubt that Mr. McGri ff caused  
14 injury, harm, and loss to the victim, the victim's family and  
15 the victim's friends:

16 A. With respect to Count Six (Eric Smith), yes or  
17 no?

18 B. With respect to Count Eleven (Troy Singleton),  
19 yes or no?

20 Do you unanimously find that the government has  
21 proved beyond a reasonable doubt that if incarcerated for life  
22 without the possibility of release, Mr. McGri ff poses a risk  
23 of future dangerousness:

24 A. With respect to Count Six (Eric Smith), yes or  
25 no?

1           B. With respect to Count Eleven (Troy Singleton),  
2 yes or no?

3           Go on to Section IV.

4           Complete Section IV only with respect to those  
5 counts, if any, for which, you (a) answered "yes" in Section I  
6 and (b), unanimously found in Section II at least one  
7 statutory aggravating factor proved beyond a reasonable doubt.

8           Mitigating factors numbers 1-8 have been  
9 established. You must, therefore, consider them and decide  
10 how much weight they should be given in your individual  
11 sentencing decisions.

12           1. If not sentenced to death, Mr. McGri ff will be  
13 punished by a sentence of lifetime imprisonment with no  
14 possibility of release.

15           2. Emanuel Mosley ("Manny Dog") will not be  
16 sentenced to death for his role in the murders of Eric Smith  
17 and Troy Singleton.

18           3. Barry Mungo ("Barry Broughton") will not be  
19 sentenced to death for his role in the murders of Eric Smith  
20 and Troy Singleton.

21           4. Alvin Smiley will not be sentenced to death for  
22 his role in the murders of Eric Smith and Troy Singleton.

23           5. Russell Allen ("Les") will not be sentenced to  
24 death for his role in the murder of Eric Smith.

25           6. Dennis Crosby ("How-about") will not be sentenced

1 to death for his role in the murders of Eric Smith and Troy  
2 Singleton.

3 7. Nicole Brown will not be sentenced to death for  
4 her role in the murder of Eric Smith.

5 8. Climmiette Jordan will not be sentence to death  
6 for his role in the murder of Eric Smith.

7 SECTION IV: MITIGATING FACTORS (Continued).

8 For mitigating factors numbers 9-16, indicate the  
9 number of jurors, if any, who find that the defendant has  
10 proved by a preponderance of the evidence that the factor  
11 exists. Any juror who finds a mitigating factor so proved  
12 must consider it and decide how much weight it should be given  
13 in his or her individual sentencing decision.

14 9. The favorable plea agreements offered to the  
15 cooperating witnesses in this case is something that weighs  
16 against imposition of a sentence of death for Mr. McGri ff.

17 Number of jurors who find #9?

18 10. By voluntarily choosing to engage in violent  
19 criminal conduct, the victims in this case willingly  
20 participated in dangerous and illegal activities, a  
21 circumstance that contributed to their unfortunate deaths.

22 Number of jurors who find number 10?

23 11. The murders in this case were motivated, in  
24 part, by Mr. McGri ff's sincere belief that the victims, and  
25 others, were out to kill him.

Number of jurors who find number 11?

12. The evidence does not establish Mr. McGri ff' s  
guilt of the capital crimes with sufficient certainty to  
justify imposition of a sentence of death.

Number of jurors who find number 12?

13. If Mr. McGri ff is executed his friends and  
family will suffer grief and loss.

Number of jurors who find number 13?

14. Mr. McGri ff has proven himself to be capable of  
acts of generosity and kindness.

Number of jurors who find number 14?

#### SECTION IV: MITIGATING FACTORS (Continued).

15. At the time of the murders Mr. McGri ff was  
attempting to move his life in a positive direction.

Number of jurors who find number 15?

16. Mr. McGri ff' s life has value.

Number of jurors who find number 16?

The following extra spaces are provided to write in  
additional mitigating factors, if any, found by one or more  
jurors by a preponderance of the evidence. If no additional  
mitigating factors are found write "NONE." If more space is  
needed, "Continued" and use the reverse side of the page.

Number of jurors who so find:

Number of jurors who so find:

Number of jurors who so find:

## 1           SECTION V:     DETERMINATION OF SENTENCE:

2           Complete Section V only with respect to those  
3 counts, if any, for which you (a) answered "yes" in Section I,  
4 and (b) unanimously found in Section II at least one statutory  
5 aggravating factor proved beyond a reasonable doubt.

6           We, the jury unanimously find beyond a reasonable  
7 doubt that the aggravating factor, or factors found to exist  
8 sufficiently outweigh the mitigating factors such that death  
9 is the appropriate sentence for Mr. McGri ff on Count Six. We,  
10 therefore, unanimously find that Mr. McGri ff should be  
11 sentenced to death.

12           We, the jury, unanimously find that the government  
13 has failed to prove beyond a reasonable doubt that death is  
14 the sentence for Mr. McGri ff on Count Six. We, therefore,  
15 unanimously find that Mr. McGri ff should be sentenced to life  
16 imprisonment without the possibility of release.

17           We, the jury, having carefully considered and  
18 answered the questions in Sections I through IV of this  
19 Special Verdict Form in accordance with the Court's  
20 instructions, and having engaged in careful and thorough  
21 deliberation and discussion, are nonetheless , unable to reach  
22 a unanimous verdict as to whether death is the appropriate  
23 sentence for Mr. McGri ff on Count Six. We understand that the  
24 consequence of this is that Mr. McGri ff will be sentenced to  
25 life imprisonment without the possibility of release.

1           Now, the same thing with respect to Troy Singleton.  
2 I am not going to read it all to you because it is exactly the  
3 same on page nine and I want you have to continue your  
4 unanimity -- the above sentence and determination reflect the  
5 jury's unanimous decision and each of you individually put  
6 your number there.

7           Actually, I am going to say determination affects  
8 the jury's decision. I am going to cross out the word  
9 unanimous. That is why I like to read these things because  
10 there is a possibility that your decision will not be  
11 unanimous, so I will change that word. And then the foreperson  
12 will indicate that they have signed and then the last section  
13 is simply the certification, which I have mentioned to you.

14           So let me do two things. I have to talk to the  
15 lawyers again to give them an opportunity to tell me if I  
16 should say something else to you, and that is part of the  
17 process. I may have made some inadvertent mistakes. Pass  
18 these forms back to juror number one, and I will get the  
19 corrected ones to you for the witness after I talk to the  
20 lawyers.

21           (The following took place at side bar)

22           THE COURT: Who goes first?

23           MR. RHUNKE: No objections to the charges.

24           THE COURT: And Mr. Jones.

25           MR. JONES: Nothing, Your Honor.



1 THE COURT: I think I did explain it. It is  
2 important they understand all of this. So my apologies for  
3 the incorrect, you know, omission of the verdict form. I have  
4 to make some little edits to what I am going to give the jury.  
5 Before I give it to them I want to make sure they are all  
6 satisfied with it so. Stay on board. I should have that to  
7 you shortly. It is twenty after one. Can you wait a few  
8 minutes while I do that so we can get that to the jurors?

9 MR. RHUNKE: Just the neatnick in me says I am  
10 wondering if there are better quality copies that could go to  
11 the jury than we have.

12 MR. JONES: There is.

13 THE COURT: There are better qualities. Let's take  
14 our lunch break now and come back at 2:30. I will have it all  
15 done correctly. We will go over it again and I'll send it in  
16 to the jurors. Okay.

17 (The following took place in open court)

18 THE COURT: Mr. Innelli, who we, obviously, know is  
19 the most popular person has told me that your hot lunch has  
20 arrived. I hope it hasn't gotten cold. Now, you can start  
21 your deliberation. We are going to swear in the marshal. You  
22 can take your time. All 12 of you have to be together when  
23 you deliberate, so if you have to use the facilities, you stop  
24 your deliberations until you are all together again.

25 I will have by 2:30 the revised charge and the

1 verdict form to you. I may be able to get the verdict form in  
2 to you first, so be a little patient about that, but you don't  
3 have to wait for it. You can start your deliberations. You  
4 will let me know how long you want to go.

5 Swear the marshal.

6 (Whereupon, the Marshal was duly sworn).

7 (Time noted: 1:20 p.m.)

8 THE COURT: Okay, folks.

9 (Whereupon, the jury exited the courtroom)

10 THE CLERK: I have the exhibit list, Your Honor.

11 THE COURT: Everyone may be seated.

12 We have the exhibit numbers that were referred to by  
13 the government during this case that are all in evidence. So  
14 we have that, as well as the new exhibits by the defendant.  
15 Have you gone over this carefully.

16 MS. POKORNY: Yes.

17 THE COURT: All right. That's been marked.

18 THE CLERK: Court Exhibit 32.

19 THE COURT: Okay. I think I can give that to the  
20 jurors. We will see you at 2:30.

21 (Whereupon, the court recessed for lunch)

22 (Continued on next page)

23

24

25

1 (A F T E R N O O N S E S S I O N.)

2 (Time noted 4:12 p.m.)

3 THE COURT: Please be seated.

4 I have a note from the jury, marked as Court Exhibit  
5 number 33, rendered at 4:00 o'clock. Your Honor, we reached a  
6 verdict.

7 Let's find out what it is.

8 (Jury enters courtroom.)

9 THE COURT: Please be seated. I have your note  
10 that you have reached a verdict. At this time Mr. Innelli  
11 will ask you the questions and you'll respond accordingly.

12 THE CLERK: Section one, preliminary factor.

13 Do you unanimously find that the government has  
14 proved beyond a reasonable doubt that the defendant, Kenneth  
15 McGri ff, intentionally participated in an act contemplating  
16 that the life of a person would be taken or intending that  
17 lethal force would be used in connection with a person other  
18 than one of the participants in the offense, and the victim  
19 died as a result of the act; A, with respect to count six,  
20 Eric Smith, yes or no.

21 JUROR #7: Yes.

22 THE CLERK: B, with respect to count eleven, Troy  
23 Singleton ton, yes or no?

24 JUROR #7: Yes.

25 THE CLERK: Section II, statutory aggravating

1 factors. Do you unanimously find that the government has  
2 proved beyond a reasonable doubt that Mr. McGri ff commi tted  
3 the offense after substantial planning and premeditation to  
4 cause the death of another person; A, with respect to count  
5 six, Eric Smi th, yes or no?

6 JUROR #7: Yes.

7 THE CLERK: B, with respect to count 11, Troy  
8 Singleton, yes or no?

9 JUROR #7: Yes.

10 THE CLERK: Did the jury unanimously find that the  
11 government has proved beyond a reasonable doubt that  
12 Mr. McGri ff procured the commission of the offense by payment,  
13 or promise of payment or anything of pecuniary value; A, with  
14 respect to Count six, Eric Smi th, yes or no?

15 JUROR #7: Yes.

16 THE CLERK: B, with respect to count 11, Troy  
17 Singleton, yes or no?

18 JUROR #7: Yes.

19 THE CLERK: Question 3, do the jury unanimously find  
20 that the government has proved beyond a reasonable doubt that  
21 Mr. McGri ff has previously been convicted of engaging in a  
22 continuing criminal enterprise; A, with respect to Count six,  
23 Eric Smi th, yes or no?

24 JUROR #7: No.

25 THE CLERK: B, with respect to count 11, Troy

1 Singleton, yes or no?

2 JUROR #7: No.

3 THE CLERK: Question 4, do you find that the  
4 government has proved beyond a reasonable doubt that in the  
5 commission of the offense, Mr. McGri ff knowingly created a  
6 grave risk of death to one or more persons in addition to the  
7 victim of the offense; A, with respect to count six, Eric  
8 Smi th, yes or no?

9 JUROR #7: No.

10 THE CLERK: Section III, non-statutory aggravating  
11 factors. Question 1, does the jury unanimously find that the  
12 government has proved beyond a reasonable doubt that  
13 Mr. McGri ff caused injury, harm and loss to the victim, the  
14 victim's family and the victim's friends; A, with respect to  
15 count six, Eric Smi th, yes or no?

16 JUROR #7: Yes.

17 THE CLERK: B, with respect to count eleven, Troy  
18 Singleton, yes or no?

19 JUROR #7: Yes.

20 THE CLERK: Did the jury unanimously find that the  
21 government has proved beyond a reasonable doubt that if  
22 incarcerated for life without the possibility of release,  
23 Mr. McGri ff poses a risk of future dangerousness, A, with  
24 respect to count six, Eric Smi th, yes or no?

25 A No.

1 THE CLERK: B, with respect to count eleven, Troy  
2 Singleton, yes or no?

3 JUROR #7: No.

4 THE CLERK: Section IV, mitigating factors.

5 THE COURT: You don't have to read one through  
6 eight. We'll start with nine.

7 THE CLERK: The favorable plea agreements offered to  
8 the cooperating witnesses in this case is something that  
9 weighs against imposition of a sentence of death for  
10 Mr. McGri ff. Number of jurors who find number 9?

11 JUROR #7: Five.

12 THE CLERK: Question 10, by voluntarily choosing to  
13 engage in violent criminal conduct, the victims in this case  
14 willingly participated in dangerous and illegal activities, a  
15 circumstance that contributed to their unfortunate deaths.  
16 Number of jurors who find number 10?

17 JUROR #7: 11.

18 THE CLERK: Question 11, the murders in this case  
19 were motivated, in part, by Mr. McGri ff's sincere belief that  
20 the victims and others were out to kill him. Number of jurors  
21 who find number 11?

22 JUROR #7: Seven.

23 THE CLERK: Question 12, the evidence does not  
24 establish that Mr. McGri ff's guilt of the capital crimes with  
25 sufficient certainty to justify imposition of a sentence of

1 death. Number of jurors who find number 12?

2 JUROR #7: 7.

3 THE CLERK: Question 13, if Mr. McGri ff is executed,  
4 his friends and family will suffer grief and losses. Number  
5 of jurors who find number 13?

6 JUROR #7: 2.

7 THE CLERK: Question 14, Mr. McGri ff has proven  
8 himself to be capable of acts of generosity and kindness.  
9 Number of jurors who find number 14?

10 JUROR #7: Five.

11 THE CLERK: Number 15, at the time of the murders,  
12 Mr. McGri ff was attempting to move his life in a positive  
13 direction. Number of jurors who find number 15?

14 JUROR #7: 4.

15 THE CLERK: Number 16, Mr. McGri ff's life has value.  
16 Number of jurors who find number 16?

17 JUROR #7: 9.

18 THE CLERK: Were there any additional mitigating  
19 factors?

20 JUROR #7: Yes.

21 THE COURT: State which they are. You can read it.

22 JUROR #7: If tried in the New York State court,  
23 execution would not be an option.

24 THE CLERK: Number of jurors who so find?

25 JUROR #7: 3.

1 THE CLERK: Were there any others?

2 JUROR #7: No.

3 THE CLERK: Section V, determination of sentence.  
4 Do the jury unanimously find beyond a reasonable doubt that  
5 the aggravating factor or factors found to exist sufficiently  
6 outweigh the mitigating factors such that death is the  
7 appropriate sentence for Mr. McGri ff on count six, we  
8 therefore unanimously find that Mr. McGri ff should be  
9 sentenced to death.

10 JUROR #7: No.

11 THE CLERK: Do the jury unanimously find that the  
12 government has failed to prove beyond a reasonable doubt that  
13 death is the appropriate sentence for Mr. McGri ff on count  
14 six. The jury therefore unanimously found Mr. McGri ff should  
15 be sentenced to life imprisonment without the possibility of  
16 release.

17 JUROR #7: No.

18 THE CLERK: Does the jury having carefully  
19 considered and answered the questions in Sections I through IV  
20 of this Special Verdict Form in accordance with the court's  
21 instructions and having engaged in careful and thorough  
22 deliberations and discussion, are nonetheless unable to reach  
23 a unanimous verdict as to whether death is the appropriate  
24 sentence for Mr. McGri ff on count six. Did you understand  
25 that the consequences of this is that Mr. McGri ff will be



1 sentenced to life imprisonment without the possibility of  
2 release?

3 JUROR #7: Yes.

4 THE CLERK: Determination of sentence, count 11,  
5 Troy Singleton. Do the jury unanimously find --

6 THE COURT: You can tell me what it is.

7 JUROR #7: The third one, we the jury --

8 THE COURT: The first two are no?

9 JUROR #7: Yes, your Honor, the third is yes.

10 THE COURT: Did you each sign the official sheet  
11 with the numbers?

12 JUROR #7: Yes.

13 THE COURT: Did you date it, madam foreperson?

14 JUROR #7: Yes.

15 THE COURT: Did you fill out the certification,  
16 each of you?

17 JUROR #7: Yes.

18 THE COURT: You signed the name to the one that's  
19 under seal?

20 JUROR #7: Yes.

21 THE CLERK: Shall I poll the jury?

22 THE COURT: Yes.

23 Juror number 1, is that your verdict?

24 JUROR number 1: Yes.

25 THE CLERK: Juror number 2, is that your verdict?

1 JUROR number 2: Yes.

2 THE CLERK: Juror number 3, is that your verdict?

3 JUROR number 3: Yes.

4 THE CLERK: Juror number 4, is that your verdict?

5 JUROR number 4: Yes.

6 THE CLERK: Juror number 5, is that your verdict?

7 JUROR number 5: Yes.

8 THE CLERK: Juror number 6, is that your verdict?

9 JUROR number 6: Yes.

10 THE CLERK: Juror number 7, is that your verdict?

11 JUROR number 7: Yes.

12 THE CLERK: Juror number 8, is that your verdict?

13 JUROR number 8: Yes.

14 THE CLERK: Juror number 9, is that your verdict?

15 JUROR number 9: Yes.

16 THE CLERK: Juror number 10, is that your verdict?

17 JUROR number 10: Yes.

18 THE CLERK: Juror number 11, is that your verdict?

19 JUROR number 11: Yes.

20 THE CLERK: Juror number 12, is that your verdict?

21 JUROR number 12: Yes.

22 THE CLERK: Jury polled, your Honor.

23 THE COURT: Folks, you've now completed your most  
24 difficult type of responsibility, in my opinion, that citizens  
25 can be called upon to discharge, being called by our random

1 selection process that people are called to serve as jurors.  
2 You've completed, I think, service in the most difficult of  
3 cases you can possibly imagine.

4 When you came here, nobody, I'm sure, had any sense  
5 way back when whether you would be called for an accident  
6 case, malpractice case and we've gotten to know each other  
7 from a distance, had not had a chance to speak to each other  
8 which will be cured shortly.

9 I think this is two months from the time you first  
10 actually were called. I think it was December, if I remember  
11 correctly, or was it November? It was November.

12 I've been able to observe you as you've been able to  
13 observe me throughout these proceedings. We each realize the  
14 intensity of the commitment, the responsibilities we each  
15 respectively have had to share in terms of the fact that I'm  
16 the person in charge of the law department. You're the  
17 persons in charge of the fact department. Without either of  
18 us, our system of justice just doesn't work. Hopefully, you  
19 can feel as I do, once again, reinforce the value of the jury  
20 system we have in our country.

21 You've just been exemplary. The attention you've  
22 given to this, I think you spent four days on the guilt phase.  
23 I was so impressed with the fact that you were able to go  
24 through each of those counts and find not guilty in certain  
25 respects, guilty in other respects; that you understood the

1 difference between murder in aid of racketeering; that you  
2 found the defendant not guilty and were able to differentiate  
3 between that and the elements required for the murder for  
4 hire.

5           Once again, it impresses with me how capable and  
6 competent citizens are, especially 12 of them collectively,  
7 listening to each other, reflecting upon the case and  
8 deliberating.

9           I'm a great believer in the jury system. Once  
10 again, it proves to be the very best system we have in our  
11 troubled world.

12           It's important that I make a public statement  
13 commending you for a very difficult call that you have been  
14 expected to engage in and you did so in an accepted fashion.

15           What I'm going to do now, I'll make myself available  
16 to you in the jury room. I think I mentioned this to you  
17 initially to answer whatever questions you may have. You were  
18 not allowed to ask questions, participate. You may have some  
19 curiosities about things. I want to make myself available to  
20 do that.

21           I'm not going to engage in your deliberative process  
22 but make myself available, introduce you to my staff, explain  
23 what goes on in chambers, how we process these matters, also  
24 to inquire if there's any instructive recommendations you may  
25 have as to how you were treated by all the court personnel in

1 addition to Mr. Innelli.

2 It's an opportunity to tell me if there's any way we  
3 can improve how we go about our business. It's a good,  
4 constructive opportunity.

5 I'll tell you in public there is no gag order. The  
6 freedom of the press is sacrosanct. We respect it regardless  
7 what they may or not do in a situation. It's a rock-bed  
8 principle of our practice in an open courtroom.

9 My job is to make sure those constitutional rights  
10 are fully protected. There's no gag order. Whether you wish  
11 to speak to the press, that's up to you. I've been asked to  
12 inquire of you. You can make your own separate determinations  
13 in respect to that.

14 With that, wait for me in the jury room. I'll be  
15 there shortly.

16 (Jury leaves courtroom.)

17 THE COURT: Everyone, please be seated.

18 Mr. Ruhnke, normally we just will not do anything  
19 else today, but we'll have to set a sentence date. Do you  
20 wish to speak to the issue?

21 MR. RUHNKE: Your Honor, what we would like you to  
22 do is set a very short sentence date. The sentences on counts  
23 six and eleven are mandatory life terms. There doesn't seem  
24 to be any need for an extensive presentence report. Maybe  
25 your Honor might have a probation officer calculate the drug

1 amount guidelines but beyond that --

2 THE COURT: Is there any particular compelling  
3 reason why it would make a difference? Maybe I'm not aware.  
4 It's a question of place of sentencing, I guess, place of  
5 commitment?

6 MR. RUHNKE: Yes. The sooner he's sentenced, the  
7 sooner he's out of the situation at the Metropolitan Detention  
8 Center.

9 THE COURT: Might be a good idea to get him out of  
10 here. What do you say, Ms. Pokorny?

11 MS. POKORNY: The issue OF getting him out of here,  
12 the PSR are two different individuals. B O P needs a P S R,  
13 that determines what facility they place him in.

14 THE COURT: It has a bearing on sentencing.

15 MR. RUHNKE: In the Aguilar case, they sentenced  
16 him two weeks after verdict.

17 MS. POKORNY: It was a problem. Basically they  
18 have to do a full-blown investigation anyway.

19 THE COURT: I'll speak to probation, see if we  
20 can move it along, what their time concerns are. They, as  
21 many parts of government, have been afflicted by budgetary  
22 cuts. We have a problem there because of the monies that are  
23 spent here and there. We've been waiting for many months to  
24 get presence reports because they're understaffed. I'm going  
25 to speak to them, ask them if they can make a special effort

1 to move the process along. I'll let you know.

2 MR. RUHNKE: There's an existing presentence report  
3 from the District of Maryland.

4 THE COURT: We'll get that.

5 MR. RUHNKE: From two years ago.

6 THE COURT: I'll do the best to move the process  
7 along, see how it goes. I'll have to speak to probation, find  
8 if there is any necessary funding these days to give us  
9 expeditious reports.

10 MR. RUHNKE: We'll cooperate in getting a federal  
11 PSR, only two years old.

12 THE COURT: I don't think there's anything that  
13 needs to be done. Whatever motions you feel you want to make,  
14 you'll make them in due course.

15 I don't know whether you want to have the  
16 opportunity to talk to the jurors. I'll tell them also  
17 they're free to speak to counsel if you want to do that.

18 MR. RUHNKE: If they want to talk with us, we'll be  
19 glad to talk to them.

20 THE COURT: I'll see if they want to talk to the  
21 press, counsel.

22 I've complimented counsel on the record without this  
23 big audience a day or two ago. I think my feelings towards  
24 the jurors, hopefully, came across as heartfelt and sincere,  
25 exactly how I feel. These citizens have put in an enormous

1 service to the country. You folks have also. Mr. Ruhnke and  
2 his team, assigned counsel, all the experts, you left no stone  
3 unturned which is the way a capital case, I guess all cases,  
4 but especially a capital case should be addressed. It's an  
5 enormous expense. We know that. It's money that has to be  
6 spent when the issue is life or death.

7 You and Ms. Barrett are to be complimented for the  
8 enormous energy that you displayed here. The public doesn't  
9 know about your energy. They weren't getting those daily  
10 letters, memoranda from you, as I am.

11 You three are younger than Mr. Ruhnke -- I don't  
12 know about Ms. Barrett -- are to be commended also. This is  
13 tough stuff when you're charged by your responsibilities as  
14 Assistant U.S. Attorneys to prosecute cases that superiors say  
15 must be prosecuted and you did it professionally. I know each  
16 of you from other cases. You have stood up tall. You should  
17 feel very good about it.

18 The issue, of course, as you know is justice. The  
19 fact you didn't get a full verdict here doesn't reflect  
20 negatively, of course, on your talents but does reflect well  
21 on the fact you adhere to the highest standards of your office  
22 of presenting the case in a professional way. You ought to be  
23 commended.

24 MS. POKORNY: Thank you.

25 THE COURT: Having said that, let me talk to the



1 jurors. I'll tell them they can speak to you or the press.

2 We'll see what they think about it.

3 (Whereupon this matter concluded)

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